SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FREDRIC RELLER, Plaintiff,	)	Case No. BC 261796
vs.	)	
PHILIP MORRIS USA, INCORPORATED, et al., Defendants.	)	

Deposition of KENT L. TEDIN, Ph.D., taken on behalf of the Plaintiff, at 10:30 a.m., Saturday, May 10, 2003, at 11755 Wilshire Boulevard, Los Angeles, California, before Audra E. Cramer, CSR No. 9901.

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LOS ANGELES, CALIFORNIA;
SATURDAY, MAY 10, 2003, 10:30 A.M.

KENT L. TEDIN,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. GOLDSTEIN:

Q. Could you please state your name.

A. Kent Tedin.

Q. It is Dr. Tedin?

A. That's correct.

Q. You've had your deposition taken before?

A. I have.

Q. I'm sure you're generally familiar with the deposition process, but just to create a record I want to cover a couple ground rules, if I may.

You have taken an oath. It is the same oath you would give in a court of law. You understand that?

A. Yes.

Q. We do not want you to guess when you give an answer, but we're entitled to your best estimate. We would like to accommodate you. If you wish to speak with counsel or if you wish to take any breaks, please

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feel free to do so. Similarly, if you don't understand a question, feel free to ask us to restate it, because I'm sure all my questions won't be perfect. Indeed maybe none of them will be perfect.

At the end of this deposition, the testimony here today will be transcribed into booklet form, and you will be given opportunity to review it and sign it under penalty of perjury. You understand that?

A. Yes.

Q. You may have an opportunity to make changes to that deposition, but should you make any changes of a substantive nature, they may be commented upon at trial and could prove embarrassing to you. You understand that as well; right?

A. Yes.

Q. You aren't under any medication today that might prevent you from giving your best testimony; is that right?

A. No.

Q. You have presented me with a box of materials that I haven't had a chance to look at yet, but first let me ask, did you prepare this box personally?

A. I sent a list of items to Shook Hardy. They did the actual preparation. They did so at my instruction.

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MR. GOLDSTEIN: Counsel you have here today is from Shook, Hardy & Bacon?

MR. GARDNER: No. Latham & Watkins.

BY MR. GOLDSTEIN:

Q. Did someone assemble the papers that you brought here with you today other than yourself?

A. Yes.

Q. Who is that?

A. I don't know. It was done in the offices of Shook Hardy. I don't know the specific person that did it.

Q. And did you produce for them these documents at some point in time prior to today?

A. Yes.

Q. When was that?

A. Probably a lot of them would have been prior to July 15th of 2002; some additional materials after that.

Q. Did you have an understanding that these materials would be produced here today?

A. Yes.

Q. And did you have any specific contact at Shook, Hardy & Bacon as to what documents they were to produce here?

A. Yes. I gave them the information as to what documents I relied on.

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Q. In what way did you give them that information?
A. I made copies of them and sent them via FedEx to their Kansas City office.
Q. When was that?
A. It would have been predominantly before July 15th, 2002, and maybe another 15 or so documents after that point at various times.
Q. When was the most recent time prior to today that you provided them with documents for their specific inclusion in production today?
A. Probably about three weeks ago.
Q. What documents did you give three weeks ago?
A. Would have been some dictionary definitions and thesaurus, list of analogies and synonyms of knowledge. I think there is belief in there; I think I also made a copy of the dictionary definition of belief and asked them to include it.
Q. Who at Shook, Hardy & Bacon did you primarily have contact with regarding providing your testimony in this case?
A. David Boman, B-o-m-a-n.
Q. You are presently employed it the University of Houston; is that correct?
A. That's correct.
Q. You are no longer chairman, I take it?

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A. No. I stepped down as of September 1st, 2002.
Q. Have you supplied us with an accurate, current vitae?
A. No, I have not.
Q. Is there a vitae in here; do you know?
MR. GARDNER: No, it wasn't on the request. Were you asking him? I thought you were looking at me.
MR. GARDNER: Yes, I was asking him.
THE WITNESS: No, it was not on the request, so I did not provide it.
BY MR. GARDNER:
Q. When were you asked specifically as to whether or not you would be available to testify as an expert witness in this case?
A. Let me think. Probably about two months ago.
Q. Who asked you?
A. Mr. Boman.
Q. Can you tell me what was said and by whom in that conversation?
A. He just said that a case had been filed in California, and would I be interested in testifying in the case if they are interested in having me, and I said yes, I would.
Q. Is it correct that you are presently teaching courses at the University of Houston?

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A. No, I'm not.
Q. What activities occupy your day pretty much?
A. Research projects. Like I said, I was chairman a long time. I didn't teach many classes, so I have to gear up and do preparation to begin to teach some classes.
Q. You have an office there?
A. Yes.
Q. That is an office provided by the University of Houston?
A. Yes.
Q. Are you also paid something for working for them?
A. Yes.
Q. Can I ask what your salary is?
A. $92,000 for nine months.
Q. Do you have assignments that you're given by the university?
MR. GARDNER: Let me object to the form of the question. Go ahead.
BY MR. GOLDSTEIN:
Q. Well, is it your choice to do whatever you wish to do, how you fill your time during those nine months?
A. I'm given teaching assignments. I gave them to myself when I was chairman for sixteen years. I am

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expected to do research, present papers at conventions.
Q. Does someone assign them to you?
A. Correct.
Q. Since you stepped down as chairman, can you tell me what assignments you have undertaken?
MR. GARDNER: When you say assignments, you mean teaching assignments? I want to make sure we're all on the same page so the record is clear.
BY MR. GOLDSTEIN:
Q. You haven't started teaching yet; is that correct?
A. Correct.
Q. I want to know how you fill your days, weeks and months the nine months particularly that you work at the university. So the best that you can tell me -- why don't you tell me what you've been doing for the last nine months.
A. The last nine months I have been on leave. My time has been filled by working on my research projects and preparing new course material for the courses that I will be teaching this coming fall and also working on a variety of consulting projects.
Q. During that time you have been on leave -- and for what period of time is that, by the way?
A. It is the academic year of 2002-2003, so it

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would be the fall semester of 2002 and the spring semester of 2003.

Q. Did you say in response to my last question -- I thought that I heard spring 2002 and fall of 2003 you were on leave; is that correct?

A. That's correct.

Q. The date that you rejoined the faculty is what date, specifically?

A. About August 25th, 2003 is when classes start.

Q. When was the last time that you were on the faculty?

A. I'm not sure I understand.

Q. Maybe I'm using the wrong term.

When was it that you went on leave?

A. I went on leave beginning on September 1st of 2002.

Q. And is that a sabbatical that you took during that time?

A. It's not a sabbatical in a strict sense as the University of Houston and state of Texas don't allow sabbaticals. It is just simply something where I needed to gear up my teaching agenda after 16 years of being chairman. They commonly will give administrators a one-year leave to get their research back on track.

Q. Have you undertaken research in order to get

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back on track?
A. Yes.
Q. In what fields?
A. I'm doing research on parent attitudes towards charter schools; why some parents choose charter schools, why some don't, what are the characteristics, what are the predictions.
Q. Charter schools being private schools?
A. No. They are public schools that aren't operated under the same set of guidelines that normal, traditional schools are operated under. They have some freedoms on some of the sort of normal requirements that the government places on normal schools.
Q. Did you come up with that subject yourself?
A. Yes.
Q. Any other subjects you're working on?
A. I'm also working on school equalization; that is the way schools are financed. I'm looking for public support for financial equalization at the public schools.
Q. Did you have anybody working for you in these research assignments?
A. I have a teaching assistant.
Q. What is that teaching assistant's name?
A. Greg Murray.

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Q. M-u-r-r-a-y?
A. That's correct. And my teaching assistant this summer and last semester is Colleen Berry. And last semester was Greg Murray.
Q. B-e-r-r-y?
A. B-e-r-r-y, yes.
Q. And you have been paid during this one year; correct?
A. Yes.
Q. What other income-producing ventures have you undertaken during the last year?
A. I work as a non-testifying consultant in a variety of cases. People ask me to do community surveys, and I've done maybe one or two perhaps in the last year.
Q. In what fields?
A. Other community surveys, getting a lay of the land for particular lawsuits in terms of what public opinion looks like on issues that may be relevant to those lawsuits.
Q. What was the first time that you ever were compensated to render expert opinion?
A. Probably 1978.
Q. By whom were you compensated?
A. By the State of Texas, I believe.

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Q. On what subject?
A. Venue change.
Q. In a criminal case?
A. Yes.
Q. What was the next time you testified as an expert?
A. Probably in a trademark case.
Q. When was that?
A. 1983.
Q. When you answered to my question "testified," you understand that can mean either in deposition or trial?
A. I do.
Q. When was the next time that you testified as an expert?
A. It would have been a number of outdoor electrical hazard cases that I testified in, either having my deposition taken or testifying in court. I think there were five of these. They ranged from I think 1982 was the first. The last was about '87 or 1988.
Q. Just to take as an example that as a category of subjects on which you have testified, could you explain for me please what your job assignments were? Were they similar in each of those cases?

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A. Yeah, they were similar in each of the five.
Q. Could you tell me what your assignment was.
A. Right. I worked for the plaintiffs, and they represented individuals that came into contact with high-voltage outdoor electrical lines. And one of the allegations made by the plaintiffs is that people did not understand the hazards of outdoor, pole-to-pole electrical lines. I conducted a public opinion survey in collaboration with Richard W. Murray in all of these to determine the extent that the public was aware of the hazards of outdoor, pole-to-pole electrical current.
Q. That is p-o-l-e; right?
A. As opposed to public opinion poll, p-o-l-l; that's correct.
Q. What was the next case that you recall having testified in as an expert?
A. Probably the lawsuit involving the Houston Lighting and Power South Texas Nuclear Plant. And Westinghouse made some generators that were defective and were sued by South Texas Nuclear Plant and by HLMP to recover the money, the $1.2 billion they spent for those generators.
Q. What was your assignment for those cases?
A. Again, I did a venue survey attempt to go demonstrate that Westinghouse could not get a fair trial

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in the south county in which Westinghouse was located.
Q. You were hired by the defendants in that case?
A. I forget who was the defense. I was hired by Westinghouse. I presume they were the defendants, yes.
Q. All right. How long did you spend on that project?
A. You mean total number of hours? Gee, I don't even know. It's been 10, 12 years ago or more than that. I would guess I probably put 25 or 30 hours into it.
Q. Okay. In their instructions to you, did they tell you that they would like to have data that would support a change of venue?
A. No. They just asked me, from what I recall from a very long time ago, they simply wanted my advice as to whether it was worth doing a change of venue survey. I conducted a pretest as you frequently do in these cases, a little plot of 100 interviews, and I advised them based on my findings on this pilot to go ahead and do a full blown survey and see what the results of that would be.
Q. How expensive is a pilot?
MR. GARDNER: Objection to the form of the question. It's vague, but --

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BY MR. GOLDSTEIN:
Q. If you understand.
A. I'm trying to figure what the cost of interview would have been in 1985 or '6. It probably cost about $15 an interview for the pilot.
Q. I don't mean individual people that were interviewed, but the total cost to Westinghouse or their counsel for conducting the pilot, just approximately.
A. $1,500-$2,000.
Q. Okay. How much was it to do the full study that I assume followed?
A. I would guess, including the cost of the interviewing, again this is a long time ago, so I would think it would probably be around $15,000.
Q. What were you paid for your services?
A. Probably about $4,000-$5,000.
Q. What was the next time that you recall having testified as an expert?
A. Probably for the lawyer Steven Jones who represented Timothy McVeigh. I did venue change surveys to support Mr. Jones's motion to move the case out of Oklahoma.
Q. How much were you paid for that?
A. I think my total billings independent of cost, my net was about $75,000.

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Q. What were your costs in that?
A. Probably around $120,000-$130,000.
Q. Forgive me for not recalling the specific details that may be important in your life, but was venue changed?
A. Yes. The case was moved to --
Q. Denver, Colorado?
A. Yes, Denver, Colorado.
Q. Did the U.S. Government pay your fee in that case?
A. I believe the U.S. Government paid my fee in that case. Certainly Tim McVeigh did not.
Q. When was the next time that you were an expert witness in a case?
A. Probably -- I'm trying to think. A case involving the manufacturer of cellulose and its fire-retardant properties. I actually testified about a video that was constructed by the fiberglass corporation, Corning, whoever makes fiberglass. What I did was show the video to a group of subjects, get their reaction. The video tended to be very flamboyant, burn your house down, so use fiberglass instead of cellulose.
Q. What was the project that you understood took there?
A. Again, I showed a group of people that were

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recruited by a professional marketing firm. I showed them the film, about a 20-minute film, and I had them fill out a questionnaire giving their reactions.

Q. Is it correct that you don't proffer a particular opinion about events? In other words, say for example, in the case involving the fiberglass, you don't opine personally about something you would see in the movie; correct?

A. No.

Q. That is outside of your expertise?

A. Generally, in that particular case it was certainly outside my area of expertise. I don't know that that would always be the case, but in that case it was.

Q. Your expertise then -- why don't I ask you to define that for me. What is the area of expertise that you find yourself testifying about?

A. I'm an expert in survey research methodology and in public opinion; the expert interpretation of public opinion poles.

Q. Right.

Let me go to the next time you testified as an expert witness after the cellulose case: When was that that you can recall?

A. That was about 1991.

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Q. The McVeigh case, did we take that out of sequence then, because I think that was '95.

A. It was probably later then. I think that came after McVeigh's, so it must have been '96 or so.

Q. When was the next time?

A. Probably the lawsuit brought against Nintendo by the models used for Mortal Kombat.

Q. Is that with a "K," Kombat?

A. Right.

Q. When was that?

A. 1998 or '9, I think.

Q. What were you asked to do in that case?

A. I was asked to perform mall intercepts. I'm sure you have seen these forms of survey. Someone will ask you in a mall, "Please come back to this room, and I'm going to give you a Coke and a Pepsi to take a Pepsi test."

Q. No. I usually call the police when that happens.

A. In this case, people were asked if they were willing to come back and look at pictures of the models that were used to create the characters that were used in Mortal Kombat, look at videos of Mortal Kombat, look at the pictures that were used to create the figures in Mortal Kombat and see if they could actually match the

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photo to the model in Mortal Kombat.
Q. Who hired you to do that?
A. Nintendo. Well, a law firm in New York called Lord, Bissell & Brook.
MR. SLADE: That's the correct order.
THE WITNESS: All right.
BY MR. GOLDSTEIN:
Q. When was the next time you served as an expert?
A. I've gotten out of sequence. I did with one for the NCAA. This one would have been about in '97, I think; maybe later. Again, I just can't recall, but '97, '98, '99, they were being sued by Jerry Tarkanian. He was the basketball coach at University of Nevada. NCAA did not think they could get a fair trial in Las Vegas. They wanted to move the case to Reno. I did surveys in Las Vegas. I did surveys in Reno, and I wrote a report that was presented, and I was deposed in that and arguing or expressing the opinion that Mr. -- that the NCAA could not get a fair trial in Las Vegas.
MR. GARDNER: I'm going to move to strike about 95 percent of that last answer. I think the question was far simpler, and the answer went way beyond the scope of the question.
BY MR. GOLDSTEIN:
Q. You testified for the NCAA; is that correct?

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A. That's correct.
Q. Where was the trial held in that matter?
A. It settled.
Q. What was the result of the venue motion?
A. The venue motion was denied.
Q. What were your findings in that case?
A. That the public in Las Vegas in the county -- I forgot the county name -- had a very favorable view of Mr. Tarkanian, and a very unfavorable view of the NCAA when compared to residents in whatever county Reno was in.
Q. So it was kept in Las Vegas then?
A. The motion to change venue was kept in Las Vegas; that's correct.
Q. In a counterpart to you, another expert was hired to counter your polling result?
A. Yes.
Q. And who was that?
A. His name was Robert Tortola.
Q. Do you know him?
A. No.
Q. This was the first time you had ever run across him?
A. No.
Q. Did he conduct similar surveys in that case?

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A. No.
Q. Did he conduct surveys?
A. He did not conduct surveys in that case.
Q. What did he do?
A. He was a critic.
Q. As unjust as that criticism may have been, can you account for me what it was?
A. Gee, it's been so long. The only thing that really sticks in my mind was something about response rate not being sufficiently high.
Q. Let me go to the next time you testified as an expert. Can you recall the next time after the NCAA?
A. It would probably be the venue change motion for Derrick Thomas, a Kansas City Chiefs linebacker that was killed in a rollover of an SUV.
MR. GOLDSTEIN: Is this office also handling that case?
MR. GARDNER: You might want to go check with Mike.
MR. GOLDSTEIN: No. There's a lot of rollover cases that this office handles, so that's why I was asking.
THE WITNESS: The attorney that cross-examined me, his last name was Robb. He is a plaintiff's attorney in Kansas City.

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BY MR. GOLDSTEIN:
Q. And you were retained by who again?
A. The attorneys for General Motors, the ambulance company that picked Mr. Thomas up, the dealership that sold him a car --
Q. The defendants?
A. The defendants.
Q. Who is the lawyer that hired you in that case?
A. I cannot remember his name.
Q. Do you remember the firm?
A. I think it was Conway or Cowart or something like that. I simply don't recall his name.
Q. When did you render the services in that case?
A. Probably the spring of 2001 or summer of 2001.
Q. The defendants were seeking to have a change of venue in that case from Kansas City to another venue?
A. Yes.
Q. What was the outcome for that change of venue motion?
A. The judge denied the motion.
Q. Was there someone on the other side that claimed to have the same expertise as you?
A. Yes. Political science expert from Ohio named Herbert Asher was called.
Q. Is he a professor?

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A. I think he's retired. He was a professor at Ohio State. He has retired since that time.
Q. Have you heard of him before?
A. Yes.
Q. Is he a pollster? By the way, I don't want to use a derogatory term.
A. No, not at all.
Q. "Pollster" is not a problem to you?
A. No.
Q. So Professor Asher was retained by the plaintiff in that case?
A. Yes.
Q. When did that motion get heard, if you know?
A. My best recollection would be the spring of 2001.
Q. What was the outcome of the case, if you know?
A. Right. The motion to change venue was denied.
Q. Right. You told me that, but I mean the outcome of the case.
A. It's pending.
Q. Okay. Now, what was your assignment in that case? Basically to determine whether they could have a fair trial in the city?
A. Yes, it was basically to get public perceptions of Derrick Thomas, how popular was he? How well liked

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was he? Was he an extremely popular athlete, so popular that the defense could not get a fair trial in Jackson County.

Q. What did your research concluded in that?

A. That indeed Mr. Thomas was very well liked, very popular and very highly regarded.

Q. Did you review any reports that Professor Asher gave in rendering in that case?

A. No.

Q. Did you ever learn of any testimony that he gave in that case?

A. No.

Q. How do you know that he was involved in that case then?

A. He showed up in court. Much to my surprise, but he showed up.

Q. You knew of him before?

A. Yes.

Q. Is it true he actually testified and commented on your report?

A. Yes.

Q. So you heard him testify?

A. Yes.

Q. Was he critical of anything that you did in the case?

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A. My best recollection is that he said you should have used open-ended questions when you used closed-ended questions. I think the other thing he said was that the level of possible bias in the favor of Mr. Thomas wasn't sufficiently high enough to warrant a venue change.

Q. What was the level of possible bias that you recall having found in that case?

MR. GARDNER: I'm going to object to the form of the question.

BY MR. GOLDSTEIN:

Q. Okay. You can answer.

A. I think something like about -- again, please, I'm recalling from memory -- that about 30 percent or so of the public said they would be influenced by the fact they knew things about Mr. Thomas when or if they were called for jury duty. And again, it's a very, very vague recollection.

Q. What did he say the percentage should have been?

A. I don't think he gave any specific percentage. He just said that the percentage is too low.

Q. In terms of the asking of close-ended or open-ended questions, do you have an opinion whether or not it could vary the outcome of a survey depending on

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whether you asked an open- or close-ended question?
A. Yes, it will vary the outcome of a particular topic that is being inquired into.
Q. Is it also true that the words that are used from one survey to another can also vary greatly in terms of the outcome, can be outcome determinative, if you will?
A. Outcome-determinate is probably too strong a term. It will certainly influence the level of opinion. To say it's the only thing that will determine the outcome probably is too strong.
Q. If one wanted to work backwards and you wanted to write a report on coming up with appropriate survey questions, could one perform the same survey question on a similar size sample repeatedly with varying different components of the question in order to improve on a particular desired result?
MR. GARDNER: Let me get an objection in here. I'm going to object to the form of the question. It's vague. Go ahead.
THE WITNESS: Yes, it is common to pilot studies, that is test particular wordings of a question to see if the public understands the wording to see if there is a reasonable variation in the particular question. So yes, it is quite common to test specific

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versions of a question before actually going forward with a full-blown survey.

Q. Now on the Derrick Thompson survey as an example, I wasn't there for Professor Asher's testimony, but do you understand him to be basically saying that he wasn't particularly critical of the methodology you used in the sample; he just felt that your conclusion was not accurate, and that there wasn't a high enough percentage of people that were influenced to justify a change of venue?

MR. GARDNER: I'm going to object to the form of the question. Go ahead and answer it if you understand it.

THE WITNESS: Yes. I mean, his conclusion was that the court could find sufficient numbers of unbiased persons to allow other defendants a fair trial.

BY MR. GOLDSTEIN:

Q. Would you expect in that case, and I'm going to give you a hypothetical. If you had two different questions that were asked of people in the Derrick Thomas case, and one set of questions was focused to whether people had just heard about Derrick Thomas, would you expect that the number would be substantially different if you asked a question about whether this person felt they could render a fair -- I'm

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sorry. Let me rephrase that. It is too long of a question.

Using the Derrick Thomas case as an example, would you expect different results if you asked one set of questions asking people whether they had simply known or heard of Derrick Thomas as opposed to whether they could sit fairly in judgment of him?

MR. GARDNER: I'm going to object to the form of the question. Go ahead and answer it if you understand it.

THE WITNESS: Yes. I mean, they are two different questions. As I understand it, one is an awareness question. One is a belief question, and we would not expect the same result from an awareness question that we would from a belief question. Although I certainly hold open the possibility that in some circumstances you might get the same percentage. You certainly wouldn't expect that to be the case.

BY MR. GOLDSTEIN:

Q. Are there any organizations that you belong to, like the American Society of Pollsters? I'm throwing that name out, but anything similar to that?

A. Most relevant I suppose, I'm a member of the American Association for Public Opinion Research, a member of the American Political Science Association,

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and a member of the Midwest Political Science Association and member of the Southern Political Science Association.

Q. Are these voluntary organizations that one can join? In other words, do you have to have a particular license or credential in order to join any one of these organizations?

A. No. Anybody who is interested can join.

Q. To your knowledge, do any of those maintain ethical standards of its members?

A. The American Association for Public Opinion Research has ethical standards, or you could find them on our Web site.

Q. Are there particular types of conduct which is viewed by people in your profession to be of questionable ethical propriety?

A. Yes.

Q. Can you give me an example of a few of those?

A. The one that has gotten the most publicity and comes to mind is something called Push Polls. It is a survey organization or field service posing as doing legitimate public opinion research, but in fact are trying to spread negative information about a particular candidate.

Q. In other words, in a political context you

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would expect to encounter somebody would be doing this, asking somebody something they may have fabricated in a negative way about a politician; for example, did you know that or --

A. Right. Did you know that Bob Dole did not pay taxes in the last five years? Would that influence your decision to vote for him in 1996? The object here being to say negative things about Bob Dole not really to ascertain what people's opinion is.

Q. Can you give me some other ethical transgressions that are frowned upon by the organizations you have cited?

A. When doing a survey for public dissemination which is complete information about the sampling procedure, one is expected to provide the actual wordings of the questions so that anybody who sees the results can put them in proper context by looking at the actual question itself.

Q. Anything else that you can think of?

A. That's all that comes to mind off the top of my head.

Q. Have you ever seen in your career pollsters that were accused of undertaking an assignment for a client who expected to find a particular result?

A. I don't recall anything specifically.

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Q. Okay. But in your view, would that be unethical conduct of a pollster?

MR. GARDNER: I'm going to object to the form of the question. I assume by your question would it be unethical if it actually happened, if a pollster did look for you to produce a specific result?

MR. GOLDSTEIN: Yes.

THE WITNESS: If a pollster is, in fact, concocting results deliberately to satisfy a particular client and not doing an objective search for the truth, I think that is a practice the association would frown on, although I don't know if it is part of its code of ethics.

BY MR. GOLDSTEIN:

Q. You would frown on that, would you not?

A. Yes.

Q. If a client came to you and asked you or told you it would be very beneficial to them to have a poll, come up with a type of particular result or particular slant, would it be possible in your crafting of questions -- and I don't mean you --

A. Uh-huh.

Q. In a pollster's crafting of questions in a particular survey, would it be possible to slant those or compose those in a way as to try to favor the issue

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that the client was interested in achieving without being unethical?

MR. GARDNER: I'm going to object to the form of the question. You can answer it if you understand it.

THE WITNESS: Yeah. It would depend on the subject. That is, I think even the most imaginative pollster would have a difficult time crafting a question that would result in a result of a survey indicating the public had a favorable view of Osama bin Laden. I don't think there is a favorable way one could fashion the questions to get a favorable result on that question.

There might be a way of asking a question in a way that might lead to a more favorable result for the client than if asked in other way. Such as the questions about bin Ladin are pretty much impervious to the way you might word the question. Others would be more malleable.

Q. I suppose even in that example if you asked people who were members of the Al Qaeda network, they might have a different view.

A. That's true, but I'm assuming we're talking about a representative national sample, not a specialized sample.

Q. Now, in your answer that you gave a couple

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questions back, we were talking about ethics and concocting results, and I think you also included the word public. And correct me if I'm wrong, I understood you to say that some of the these ethical requirements such as disclosing about the wording of questions and complete information about the sampling, those are standards that are upheld for public reports or reports that are going to be disseminated publicly; correct?

A. I believe that's correct. I haven't read the association's code of ethics for some time, but I am almost certain they are being made public from the media or some other source, not of proprietary source; correct.

Q. I read a former CV of yours maybe last year or two years ago that says you have conducted hundreds of polls; is that correct?

A. That is correct. Let me again, correct. I have been involved in hundreds of opinion poles.

Q. I don't mean to suggest that you were there cornering people at a mall asking them to drink Pepsi.

A. Okay.

Q. You have been involved in hundreds personally?

A. That's correct.

Q. Is it true that sometimes manufacturers of products will commission you to perform surveys of a

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private nature; in other words, that they don't want disseminated publicly until they know what the results are?

A. I have done proprietary survey work for private corporations; that's correct.

Q. Can you tell me generally speaking, what the purposes are that you're aware of. I'm not asking for your specific clients, but what types of things do manufacturers like to know if, say they are commissioning a private survey?

A. Mostly they are interested in their personal image. That is, in a particular locale, are they viewed favorably, unfavorably? If unfavorably, what is it people don't like about them? Oftentimes these are done in preparation for or the possibility of litigation. They want to get a feel for the climate of opinion, perhaps to decide, you know, is this case even worth going to trial over or should we just settle, or do we have a chance to win here?

Q. Have you been involved in any type of focus groups?

A. Yes.

Q. Can you tell me -- I have my understanding of focus groups. It might be easier if you tell me what your understanding is in the litigation context.

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A. Usually, they probably -- focus groups -- probably one could better describe them as test trials where sometimes the attorneys themselves will present both sides of the dispute. Sometimes they will hire actors or players or attorneys from firms not involved in the case to present each side of the dispute. People are recruited from the community to view these things. They then go into a mock jury room. They deliberate, and monitors watch the deliberations and give feedback to the attorneys.

Q. That's almost a form of survey, is it not, polling? It is more complex. It is not a simple question and answer, but it bears a similarity to some of the work that you do?

A. Generally, we wouldn't call that a survey. Most people would refer to that as being closer to a focus group. If you distinguish between survey research and focus groups which are often done prep for a survey. This really isn't a survey. It is closer to a focus group because the answers are free flowing. They are frequently not recorded. People just watch what is going on, get impressions, write a report.

Q. On those instances when you have been involved in private surveys that are not to be published, have you been told some of the reasons why those reports have

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not been published? First let me ask you foundationally, when you do conduct a survey, are you usually told up front whether it is going to be privately or publicly disseminated?

MR. GARDNER: I'm going to object to the form of the question. Answer if you understand it.

THE WITNESS: My understanding, I guess, is that it is not going to be publicly disseminated, and I guess I'm not always told that it's going to be maintained privately. I more or less assume that if it's conducted by a private client, that it is their choice whether or not to disseminate it publicly or keep it private.

BY MR. GOLDSTEIN:

Q. Well, if you are undertaking a project that you know is going to be presented in a famous criminal trial, you go through a different methodology and put different things in place than if you were to simply go out and ask private opinion questions about what somebody thinks of a corporate client; right?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I don't think so. I'm trying to think of what sort of things you might have in mind. Basically, regardless of the type of survey work I do, I

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follow essentially the same methodology.
BY MR. GOLDSTEIN:
Q. What about documentation? In other words, if you are going to be cross-examined on a witness stand involving an important matter in a situation such as that, wouldn't one, and I don't mean you, but wouldn't one expect the pollster to keep more accurate records than say if they were just giving an oral report to a company about a public image that they wanted to know about in a particular city?
MR. GARDNER: Let me object. I object to the form of the question.
THE WITNESS: I certainly think if you are going to testify in court, you are aware that your documents may be subpoenaed and that you need to be aware of that. On the other hand, sometimes the work that I would do for a corporation, they want to see the documents as well. They have marketing divisions with competent people who do surveys. They want to see what I'm doing and will ask for the documentation. Although in general you're more sensitive to the notion that you must keep the documents if in fact they are going to be subpoenaed and made available to the attorneys in the litigation.

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BY MR. GOLDSTEIN:
Q. In your experience, are you aware of instances where manufacturers have commissioned private polls to determine market acceptance of a particular product that they were introducing?
A. I certainly know such polls exist. I've never done one, but I know they exist.
Q. Let me go back to the list of different expert cases you've testified on. The 2001 with Derrick Thomas was the last one you gave me?
A. Out of sequence I know of maybe one or maybe two more. One I forget the title, it was a venue change survey. It was done in North Dakota. What happened was the daughter of a local Lutheran minister was very badly injured. I think she was killed in a car accident where somebody out of state ran a stop light in the fog. The case was to be tried in that county, and of course she was a very popular person. Her father was a Lutheran minister. I did a venue change survey, and I rendered an opinion that because of the popularity of this particular person, that it would be difficult for the insurance company to get a fair trial.
MR. GARDNER: I'm going to move to strike as nonresponsive to the question asked.

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BY MR. GOLDSTEIN:
Q. What was your finding in that case?
A. My finding was that given her public awareness and the affection felt about her amongst members of the community, that the insurance company could not get a fair trial in the county in question.
Q. Was the venue changed in that case?
A. Well, it was weird. It wasn't changed, but they imported a jury from out of county.
Q. Okay. In that case was somebody hired on the other side of a similar expertise to you doing surveys?
A. I do not believe so.
Q. In that case you were hired by the insurance company, were you not?
A. That's correct.
Q. That was approximately what year?
A. Probably 2000 or 2001.
Q. Okay. You said there was one or two cases. Is there another one?
A. The only other one I was not deposed or testified on, so I don't think that is relevant.
Q. Well, just so you recall, when I asked you about testifying as an expert, I wanted to include deposition and testimony at trial. You said, yes, you understood that.

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A. Yes.
Q. So I would like you to include that if you would, please, the other one.
MR. GARDNER: You're asking him to include all work where he testified either at deposition or trial; right?
MR. GOLDSTEIN: Yes.
MR. GARDNER: Just want to make sure I understand the question.
THE WITNESS: Let me get a clarification. I was not either deposed or testified in this case. I submitted an affidavit.
BY MR. GOLDSTEIN:
Q. Close enough. That's submitting testimony under oath. You're right. There's an exception to every rule, I guess, but can you tell me briefly when that occurred.
A. I don't know exactly as to date. It was very shortly after the movie Pearl Harbor came out, and probably two or three weeks after the movie Pearl Harbor came out, Nissan Motor Company was being sued by somebody who had been in a car wreck where they had hit a dear, and the car had rolled over and either badly injured or killed the person, I'm not sure what. I did a survey to determine that if because of the movie

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Pearl Harbor, there was some prejudice against Japanese that might make it difficult for the defendants in this case to get a fair trial. They were not asking for a change of venue. They were asking for a continuance until the effect of the movie died down.

Q. You were hired by Nissan?

A. Hired by Nissan; that's correct.

Q. That's probably in the last two years?

A. Yes.

Q. Does that complete your expert testimony other than this case?

A. To the best of my recollection, it does.

Q. Now, with reference to this case, you were asked by Mr. Boman at Shook, Hardy & Bacon to render expert opinion in the Reller case; right?

A. Yes, that's correct.

Q. Did he tell you what type of opinion you would be requested to render?

A. Yes. It would be expert opinion about the health hazards of smoking as indicated in public opinion polls.

Q. Did you meet with Mr. Boman in person or by phone? How did you have that conversation two months ago? When was that?

A. I believe he called me on the telephone.

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Q. How long was the conversation; do you remember?
A. A minute.
Q. Then what was the next contact you had with anybody relevant to your rendering testimony in this case?
A. As I recall, I came out to Los Angeles and discussed my research with several people whose names I do not recall. One of them briefly at the meeting was Mr. Gardner, but he was there only about 15 minutes was my recollection.
Q. When was that?
A. Probably a month or six weeks ago.
Q. Whose office did that take place at, if you remember?
A. I think it took place at the Latham Watkins office here in Los Angeles.
Q. How long was the meeting?
A. I think it was about an hour and a half.
Q. Who did the talking in that meeting?
A. I did.
Q. Who were the people who were asking questions? Other than Mr. Gardner, you can't remember anybody else?
A. There were some lawyers there who I had not met before who were just generally interested in what I was doing. I cannot remember their names.

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Q. Male or female?
A. Some male some female.
Q. How many were there?
A. Seven or eight.
Q. Any non lawyers?
A. I don't know.
Q. Anybody else present other than lawyers and yourself?
A. I don't believe so.
Q. Was there a series of questions and answers that were posed to you?
A. There might have been. I'm sure there was some questions. Mostly it was me making a presentation.
Q. Did you bring any charts or graphs with you in your presentation?
A. I can't remember if I did or not, to be honest.
Q. Did you furnish any reports to them?
A. No.
Q. Do you recall having anything of a written nature present with you at that meeting?
A. I don't recall.
Q. Do you maintain a file on the Reller case?
A. I maintain a reliance file. That's the file that I maintain.
Q. But in fact, it is maintained by the Shook,

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Hardy & Bacon firm, is it not?
A. I maintain a file at home as well.
Q. You haven't personally, physically looked through the boxes to see what is in here before today, have you?
A. I have looked through my personal box. I have not looked through that particular box.
Q. I understand when you said you provided some materials in 2002 July, you didn't provide those to Shook, Hardy & Bacon in connection with this case, did you?
A. No. They were simply as part of my ongoing research on this research project.
Q. I see. Which research project is it that you have been doing when you said "This research project"?
A. Right. I was asked in October of 2001 to conduct a research project looking at awareness and beliefs about the health hazards of smoking. The instructions were, treat this as an academic research project. Do all the same things that you would do for a research project that you might some day be published as a book or be submitted to a pier review journal.
Q. Who asked you to do that?
A. The law firm of Shook, Hardy & Bacon.
Q. Was it pursuant to a written agreement?

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A. No.
Q. Was there any correspondence that you received from them?
A. No.
Q. Why is that?
MR. GARDNER: I'm going to object to the form of the question. Lacks foundation.
BY MR. GOLDSTEIN:
Q. Well, you have worked on other projects in the past?
A. Yes.
Q. Have you ever worked on simply an oral basis? Usually you have written specifications or a written agreement, do you not?
MR. GARDNER: I'm going to object to the form of the question.
THE WITNESS: No. Quite the reverse. These are almost always done orally. I don't recall having a written agreement, say it in the Oklahoma City Bomber case.
BY MR. GOLDSTEIN:
Q. Have you received any communications from anyone connected with this case, including their lawyers, relevant to the Reller case?
MR. GARDNER: Object to the question. Work

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communications? Go ahead and answer if you understand.
THE WITNESS: I need to backtrack a little bit. Do I talk by telephone to Mr. Boman? Is that what you mean?
BY MR. GOLDSTEIN:
Q. No. I want to know first, written communications. I mean, are you ever supplied with anything in writing from anyone connected with any of the defendants in this case, including but not limited to Mr. Boman?
A. Again, a bit of clarification. I asked for materials from them. I asked for trial transcripts for people who have testified in the cases involving tobacco litigation. I asked for trial transcripts of people who were testifying about public opinion. So in that sense it is written material, but it's not material they have written themselves. It is material they have obtained for me.
Q. What depositions or trial transcripts have you reviewed?
A. I reviewed trial testimony by Mr. Ferree. I reviewed the trial testimony of Tom Smith, the director of the General Social Survey. I reviewed the trial testimony of Jon Krosnick, who is a political scientist at Ohio State.

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Q. Anyone else?
A. I'm trying to remember anybody else. I think that's everybody.
Q. Do you personally smoke?
A. No.
Q. Have you ever smoked?
A. No.
Q. Did you ever do any research prior to the time you were contacted by Shook, Hardy & Bacon on the subject of anything dealing with tobacco?
A. I had done some research of non-testifying sort.
Q. On behalf of?
A. On behalf of a law firm who contacted me.
Q. Who was that?
A. I signed a confidentiality agreement not to testify to that. The ultimate client was Philip Morris, but beyond that I'm not at liberty to disclose that information.
Q. Okay. When did you perform whatever services you can't tell us about having done?
A. I think the dates would have been 1996 to 1998 or 1999.
Q. Okay. Who paid you?
A. I was paid by the law firm that contacted me.

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Q. They represented Philip Morris?
A. I presume they represented Philip Morris.
Q. How much were you paid?
A. About $120,000.
Q. Per year?
A. For the entire project.
Q. How much time did it consume of yours?
A. Probably about 200 hours. Again, very rough, rough estimate.
Q. I take it you rendered a support of some kind?
A. I'll decline to answer that. Again, I'm concerned about my legal responsibilities under the confidential agreement I signed.
Q. You are testifying on behalf of who in this case?
A. I believe the client is Philip Morris.
Q. Okay. I will tell that you my understanding of the state of the law in the State of California, we are entitled to know the extent to which you have done work and been paid for the client. But we can fence later about that.
MR. GARDNER: We can certainly raise it later if you feel like you need to.
BY MR. GOLDSTEIN:
Q. Let me ask you: What did you review in

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preparing for giving deposition testimony in this case?
A. I reviewed my reliance file. That is essentially the bulk of the material that I rely upon, so I went through the reliance material page by page about four or five days ago.
Q. How many pages did that consist of in your review?
A. I suppose it's 5- or 600.
Q. Where did you conduct that review?
A. At my home office.
Q. How much time did you spend doing that?
A. Probably 10 hours.
Q. You bill at $300 an hour still?
A. That's correct.
Q. Who do you submit your bills to on this case?
A. David Boman.
Q. How much money have you been paid total in connection with this case?
A. About $7,000.
Q. In terms of compensation from Philip Morris, would it be fair to state that the sum total of the compensation that you've received would be arrived at by the amount of money you just testified about, approximately 7,000 in this case, and adding to that the 120,000 from the secret project in '96, '98 and '99?

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MR. GARDNER: Object to the form of the question. It's argumentative a little bit there.
MR. GOLDSTEIN: "Secret project"?
MR. GARDNER: Sure.
MR. SLADE: It was subject to the terms of a confidentiality agreement. It's not unusual.
MR. GOLDSTEIN: Well, it is highly unusual in an expert case when an expert is testifying, to my --
MR. GARDNER: It has nothing to do with this case.
MR. GOLDSTEIN: It has to do with the client, though, and we are entitled to know what was done for the client.
Q. Anyway, other than those two matters -- other than the '96 through '99 project for which you were paid 120,000 and the 7,000 that you've approximately been paid in this case, have you been compensated in any other way by anybody in the tobacco industry for rendering expert testimony?
A. Not directly from the tobacco company. I've received payments from Shook Hardy. I was compensated for the work I did beginning in October of 2001 through, I suppose, February of 2003.
Q. How much have you received from Shook Hardy?
A. I would estimate about $130,000.

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Q. That's a two-year period?
A. Since October of 2001.
Q. Are you on a monthly retainer?
A. Yes.
Q. How much is that?
A. Oh, I'm sorry. I misunderstood. I bill monthly. I don't get anything except for work that has been performed.
Q. Approximately how many hours per month do you spend working on tobacco-related matters since you were first contacted by anyone in the tobacco industry?
MR. GARDNER: I'm going to object to the form of the question.
THE WITNESS: The problem is that it varies greatly from month to month, so the only way I could answer that would probably be averaging everything over --
BY MR. GOLDSTEIN:
Q. Let's say on an annual basis?
A. I have probably devoted since 2001 about 300 hours to it.
Q. Since October of 2001?
A. Of 2001.
Q. So that's approximately 19 months; right?
A. Okay. That sounds about right.

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Q. What percentage of your gross income per year is derived from anything associated with the tobacco industry? By that I mean to include, Shook, Hardy & Bacon or any other law firms or Philip Morris, any and all payments, including giving your testimony here.

MR. GARDNER: Let me get an objection in here. Object to the form of the question.

Go ahead and answer to the extent you understand it.

THE WITNESS: During what time period?

BY MR. GOLDSTEIN:

Q. Since you first started working with or doing anything with the tobacco industry.

Was that October 2001?

A. October 2001? Yes. Probably about 60 percent -- no, that's not right. Probably about 50 percent.

Q. How about before 2001?

A. Maybe 15 percent. Again, a caveat: It depends on the time period we're talking about.

Q. Well, the period of '96 through '99, is that roughly a three-calendar-year period of time?

MR. GARDNER: I'm going to object to the form of the question.

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BY MR. GOLDSTEIN:
Q. Well what were you referring to?
A. Yeah, that's roughly a three-year period. I'm not sure that I did work for them during that entire three-year period, so off and on.
Q. Just so that I'm clear: The confidentiality agreement you referred to having signed was signed when?
A. Before having done any work at all. My guess is probably early 1996.
Q. And the signatories to that agreement were yourself and who else?
A. I don't recall.
Q. Where did you physically sign the document?
A. Again, I don't recall. My guess is in my home or my office back in Houston.
Q. And it was provided to you by Mr. Boman?
A. No. It was provided by another attorney whose name I don't recall.
Q. The name of the attorney that supplied you with that agreement was not confidential; correct? That is not part of the confidentiality agreement?
A. I don't recall. I haven't looked at the confidentiality agreement in many years.
Q. What is your understanding of what the confidentiality agreement restricts you from testifying

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or disclosing?
A. I don't recall. Like I said, I last looked at that, I think, the day that I signed it, and that would have been seven or eight years ago.
Q. Well, you're relying on your recollection of the confidentiality agreement to preclude you from answering certain of my questions, and I want to know, to the best of your knowledge -- just signing an agreement doesn't preclude you. There must have been language in that document that you feel constrains you from giving testimony about the object of the research project; correct?
MR. GARDNER: Let me just throw in an objection there to the form of the question.
BY MR. GOLDSTEIN:
Q. Okay.
A. My general understanding is simply I can say absolutely nothing whatsoever about anything that I was doing in this project.
Q. Has that subject ever come up before in any other case that you ever testified in?
A. No, not to the best of my recollection.
Q. Who else other than yourself and this attorney whose name you can't recall that presented it to you knows about the contents of the confidentiality

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agreement?
MR. GARDNER: Object to the form. Assumes facts not in evidence.
THE WITNESS: I presume it's known by the law firm the attorney works for, but I -- that's just common sense.
BY MR. GOLDSTEIN:
Q. What is the name of that law firm?
A. Again, I'm going to decline to answer that based on the confidentiality agreement that I signed.
Q. Is it your understanding that the confidentiality agreement that you signed precludes you from disclosing the name of the person that gave you that information?
MR. GARDNER: Let me object to the form of the question. I think that's pretty obvious.
But go ahead.
THE WITNESS: To the best of my recollection it precludes me.
BY MR. GOLDSTEIN:
Q. In what city is that law firm located?
A. Again, I will decline based on the confidentiality agreement.
MR. GOLDSTEIN: Are you a California lawyer? Are you admitted to the bar in California?

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MR. GARDNER: No. I'm admitted in this case.
MR. SLADE: Can I go off the record to have this discussion, Counsel.
MR. GOLDSTEIN: Sure.
(Recess taken.)
THE WITNESS: I forgot one case I testified as an expert in, obviously, and it was the Rivera case, which is a tobacco case. It just slipped my mind. I was deposed. I didn't testify in court. I was deposed. The case, I understand, was dismissed.
BY MR. GOLDSTEIN:
Q. When was that?
A. Probably about last February.
Q. 2002?
A. 2003.
Q. Who retained you to testify in that case?
A. Shook Hardy.
Q. Mr. Boman again?
A. Mr. Boman.
MR. GOLDSTEIN: I want to see if we can close this subject for the moment.
MR. GARDNER: That's fine.
BY MR. GOLDSTEIN:
Q. The 1996-through-'99 issue that you said is the subject of the confidentiality agreement, that was not

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in connection with a litigation matter; correct?
A. Again, I think I will decline to answer that.
Q. Well, can you --
MR. GARDNER: Listen. If -- we can do this on the record or off the record. I don't really care.
MR. GOLDSTEIN: Doesn't matter.
MR. GARDNER: If you want to give me the opportunity to get some information and get back to you on that, I'm happy to do it to the extent we can.
MR. GOLDSTEIN: Sure.
MR. GARDNER: His recollection is what's gotten him -- what's in the complaint. I haven't seen it. I don't know what's in it. I suspect I can find out.
MR. GOLDSTEIN: Why don't we go off the record just for one second.
(Recess taken.)
BY MR. GOLDSTEIN:
Q. You have an understanding you are going to be called upon to give certain testimony about the defendants in this case; correct?
A. I understand that, yes.
Q. Is it your understanding that is similar in nature to the testimony you were called upon to give in the Rivera case?
MR. GARDNER: Object to the form of the

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question. Vague.
You can answer if you understand.
THE WITNESS: I anticipate the testimony will be similar.
BY MR. GOLDSTEIN:
Q. Would you please tell me what opinions you are prepared to offer at trial in this matter.
A. I anticipate offering an opinion that the public was aware of the health hazards of smoking beginning as early as we have good quality survey data, which is 1954, and I'm going to testify about belief levels. I will note the belief levels that are reported in the 1954 Gallup data, and I will then discuss belief levels that are available in later public opinion surveys. And I will talk about and discuss and give opinions about the credibility of the tobacco companies as a source of information about the health hazards of smoking.
Q. Do you have an understanding who the plaintiff is in this case?
A. I read the deposition of Mr. Reller, so I know what I read in that deposition.
Q. What other materials did you read from this case?
A. That's all.

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Q. Have you now told me about everything that you read to prepare for this deposition?
A. Yes.
Q. To your knowledge is a copy of the deposition of Fredric Reller contained in this box of reliance materials?
A. I don't recall if it is or not.
Q. But as you sit here today, that would be one of the -- the information contained in the deposition is one of the materials you relied upon in giving your testimony in this case; correct?
A. No, it's not.
Q. Why did you read the deposition then?
A. Just for background purposes.
Q. Do you know how old Mr. Reller is?
A. I think he's in his early sixties.
Q. What does he do for a living?
A. I don't know.
Q. Wasn't it in the deposition?
A. It may have been. I just don't recall.
Q. Did you read more than one volume of his deposition?
A. Again, I don't recall. I think there was only one stapled together. Maybe it was more than one, but I just don't recall. It wasn't particularly long; I do

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recall that.
Q. Do you remember what brand of cigarettes he smoked, or brands, plural?
A. At some point in his smoking life, I know that he smoked Marlboros.
Q. Any others?
A. That's the only one that comes to mind.
Q. Do you know who the manufacturer is of Marlboro cigarettes?
A. Philip Morris.
Q. When did you ascertain that?
A. I probably knew that when I was in college.
Q. Okay. When is it that you recall that Mr. Reller started smoking?
A. 1955 or '6. I'm not sure which.
Q. Do you have an opinion today as to the credibility of Philip Morris as perceived by the public in surveys that you've reviewed?
A. Yeah.
MR. GARDNER: Object to the form of the question. It's vague as to time, I believe.
MR. GOLDSTEIN: "Presently" is what I meant to say. If I didn't say that, I meant to.
MR. GARDNER: I wasn't sure.

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BY MR. GOLDSTEIN:
Q. Okay.
A. Presently I've looked at polling data, and I think there is only one reference to Philip Morris in the Roper database. And I think that reference, that question about Philip Morris specifically, was a survey conducted in 1980, so that's the only information I have about Philip Morris, per se.
Q. I believe that in your answer previously as to the opinions you were going to offer, one of the issues was -- and maybe I'm confused, but you can maybe help me out here. One of the issues was going to be -- maybe these are my words -- the public's belief in the tobacco industry; is that correct?
A. Right. There are a number of questions that have been asked many, many times over a 20-, 25-year span of time asking people if they have a favorable or unfavorable view of the tobacco industry.
Q. What is your understanding, based upon the materials that you reviewed of the public's present perception of the credibility of Philip Morris?
MR. GARDNER: I'm going to object to the form of the question. Asked and answered.
Go ahead if you understand.
THE WITNESS: Like I said, in the public domain

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there is only one question specifically asked about Philip Morris. There are many asked about the tobacco industry.
BY MR. GOLDSTEIN:
Q. Let me rephrase my question: Are you prepared to offer opinions at trial as to what the public's present perception is of the tobacco industry?
A. Yes.
Q. That is based on survey's which you've reviewed; correct?
A. Yes.
Q. Not based on surveys which you personally conducted?
A. Yeah, it's all based on data in the public domain, none of which I personally conducted.
Q. So basically what you are doing is reviewing data in the public domain and summarizing in your testimony what your findings were; is that right?
A. Yes. I am looking at publicly available data, analyzing it, summarizing the results, drawing conclusions and paying particular attention to context.
Q. Does it matter when you're offering opinions in a case whether the materials from which you are deriving your raw data was performed by a neutral company as opposed to somebody that was commissioned by an

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interested party?
A. I don't think there is any way to generalize about that. I think most people who are academics place more credibility on data that is publicly available because anybody can look at it and see if the conclusions you have arrived at are, in fact, consistent with what they might arrive at. I don't know, however, that data that is proprietary is any worse. It is simply that it is not publicly available for the scholarly community to render an opinion upon.
Q. Now, your expertise, I take it, is in the ability to compile data or test data -- tell me again if you would what --
A. Sure.
Q. I mean, I take it --
A. No, I understand.
Q. I don't mean this in any demeaning way, but if something is publicly available, and with the Internet today, I take it that any member of the jury, for example, prior to their seating on the jury, or any member of the public, could go and undertake a search of some of this public data that you have analyzed; right?
MR. GARDNER: I'm going to object to the form.
MR. GOLDSTEIN: Let me rephrase.
Q. You've said that the information which you've

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analyzed and are prepared to testify about is all material that is in the public domain, meaning that any citizen could theoretically have access to the same raw data that you've analyzed and reviewed; right?

A. That's correct.

Q. I take it then that you're expertise that qualifies you as an expert is your ability to what with that data?

A. Well, I can look at that data, place it in proper context. Since sampling here is not really an issue -- it is done by a reputable firm, so I don't think how the sampling is done is particularly going to be of much concern here. The real expertise that I bring is understanding the psychology of the survey response: how people respond to surveys, how you interpret the answers you get to surveys, how you interpret the percentages that are reported in surveys and the sort of inferences that are proper to draw from that information.

Q. Have you ever taught on the subject of analyzing or quantifying whether a survey is sound to any students?

A. Yes.

Q. In what courses have you taught that subject?

A. I teach graduate survey research methods. I

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last taught that in the fall of 2000. I also teach graduate public opinion. I last taught that in the fall of 2001. It may be reversed; I can't remember. But I do survey research methods one spring, graduate public opinion the next, and so on, ad infinitum.

Q. How many students were in your class, say in the survey research one that I think you talked about first?

A. Approximately 15?

Q. What textbooks did you use, if any?

A. I used Schuman and Presser's book Questions & Answers. I used the book by Roger Tourangeau. The title of the book is The Psychology of Survey Response. I used a book -- I can't recall the person's first name; his last name is Henry. The book is called Applied Sampling. I used a book by Paul Lavrakas called Survey Research Methods. Plus additional photocopied materials that appeared in journals and in edited volumes.

Q. From the sound of all these books, it really is a very evolved science then; is that what you believe?

A. It has evolved a lot more than it was 30 years ago, but we have a reasonably good understanding of the principles of sampling and the principles of question wording.

Q. What has changed, say between 30 years ago and

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today?

A. Well, among the biggest changes would be most surveys done prior to 1978 would have been in-person surveys where you go to a person's house, knock on their door, sit down with them, interview them in person. By 1978, with the development of random digit dialing sampling schemes, meaning you can randomly select phone numbers that are representative of the entire population, survey research moved to the telephone as opposed to in-person surveys. It's also a whole lot cheaper, so that is the dominant mode of survey research done today.

Q. If one is interested in ensuring that accurate results were obtained from surveys to determine if they were valid, can you tell me some of the criteria that you look at to see if a particular report, say, that purports to say something really was fair on its face.

A. Among the things I would first look at is the sample: was it a random probability sample. And I don't mean to imply that is the only way you can get reliable public opinion information. It is just, I think, the best way. I think one key is response rates. Response rates have been declining, and some surveys that are done on the cheap have very low response rates, and, of course, the people who respond to surveys aren't

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necessarily the same as those who say, "I don't want to respond." So I would want to look at response rates.

I would also want to look at the questionnaire. There are really two key, I think, components for ensuring that you're getting meaningful results: One is the way the question is worded. The second is the order of the question in the questionnaire; what items preceded. I would want to know that.

Q. Now, would you agree that the randomized surveys that you talked about that you see more prevalent after 1978 would generate a more accurate sample than those that were, say, in person before 1978?

A. No, I would think the reverse actually: I think the surveys that were done earlier certainly had characteristics we think of as being more desirable. One of the characteristics we think of being more desirable is that they generally had better response rates.

Q. Oftentimes you might have to take into account, do you not, that people that are inclined to answer questionnaires or spend the time helping out a stranger without being compensated may be people who may not represent fairly the public? Is that a fair consideration you take into account?

A. Yeah, that is certainly a consideration.

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Q. And there is really no way that you can quantify that in terms of validity; right?
A. Well, the way you handle that -- say, for example, you do a sample and it turns out you get 9 percent African Americans in a national survey, and we know from the census data that African Americans compose 12 percent of a national sample, we would weight the sample up so that, in fact, the 9 percent do account for 12 percent once we institute a weighting scheme.
Q. But again, I'm not talking about representing necessarily a cross-section. What you just gave me an example is one where you might have to assign a particular weighted average to a sample to correlate with the corresponding public constituency; correct?
A. That's correct.
Q. My question to you is that if one was to conduct a randomized survey, say on your random telephone system, the fact that you may have gotten 50,000 responses from people that are home or retired does not in and of itself necessarily represent a fair cross-section of the public; right?
A. It doesn't necessarily represent a fair cross-section of the public, but it certainly may.
Q. There is no way to know; right?
A. Well, there are some ways to know. Certainly

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one thing we can do is compare the demographics of the sample to the demographics that we know characterize the American population based on information from the census. I would be very worried if I did a national sample and wound up with 1.5 percent African Americans when I know that the population is 12 percent. On the other hand if it turns out that the demographics are fairly close across a wide variety of demographic indicators, then I think I'm reasonably confident that the data we have are representative of the national population.

Q. Well, let me explore that a little further: If one were to inquire on a random basis of a wide sample and it came out to be exactly equal to the constituency that you understood the various profiles of the populus to include, using your example of 12 percent African American, in and of itself that doesn't mean that the people that are responding may necessarily be typical of the rest of society; they could, for example, be people that are unemployed at home watching television and may not necessarily be well informed; correct?

MR. GARDNER: Let me throw in an objection. I'm going to object to the form of the question.

Go ahead.

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THE WITNESS: Do you mean can you be absolutely certain at the 100 percent certitude level? You never can. But I think that you can be certain within the parameters of those of us in the profession that those of us in the profession understand constitutes a representative, accurate sample. By looking at demographics and looking at the response rates, we can make, I think, a professional judgment that this sample is representative of the population that it is designed to tap.

BY MR. GOLDSTEIN:

Q. Tell me the names of the entities that you primarily -- I know you mentioned Roper -- right? -- was one of the sources you went to for information from which to give testimony in this case; right?

A. That's correct. The Roper Archive.

Q. Where are they located?

A. Storrs, Connecticut. It is just a big data library. What you can do is you pay an amount of money to buy a subscription, and I can type in the word "smoking," and every question in the archive that has "smoking" in it will pop up. That is about 950 questions. I can then go through them and look to see what might be relevant for my research interests.

Q. You, in fact, did that; right?

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A. Yes, I did.
Q. When did you last do that?
A. Last night.
Q. Did you do that in preparation for giving your testimony today?
A. No. I had a lot of dead time. I had my computer in my hotel room, so I was just curious about what was the last time that anybody asked about smoking and lung cancer. So I just did a search, and I think July of 2001.
Q. What did they ask?
A. Paraphrased: Is smoking one of the causes of lung cancer, or isn't there enough information to know?
Q. Who conducted that?
A. Gallup.
Q. Now, what connection if any did the Roper Archive or -- is it the Roper Institute?
A. It is the Roper Archive at the University of Connecticut.
Q. Was it at one time called something other than Roper Archive? Was it Roper Organization or something?
A. There is a distinction between -- there is a Roper polling organization that does public opinion polls. Then there is the Roper Archive, which is a nonprofit institute attached to the University of

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Connecticut that takes as much survey data as people are willing to give them and archives it and puts it into a format that you can enter key words and pull up questions, and they sell subscriptions.

Q. What entities conducted the surveys that you reviewed to rely on to give your testimony here today?

A. There were several. Probably the most frequent source would have been the Gallup poll. I also used the Harris poll. I also used surveys conducted by the US Public Health Service. They had something called a clearing house for smoking and something else. They did surveys in the 1960s and early 1970s. There was a survey commissioned by the American Cancer Society; I used that. Occasionally there are surveys conducted by The New York Times or The Washington Post. They will sometimes not use Gallup as their field service. They will use somebody else.

All that information is presented in the question once you print it out: The dates, the survey organization, the sample size is all presented on the piece of paper that lists the results of that particular question.

Q. Have you ever as a professor or instructor ever had a group of students that you assigned, as a task, to go into the Roper Archive for the purposes of analyzing

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survey data?
A. Very rarely, and the reason very rarely is we have to pay a dollar and a half a question, and the department has to pay for it. So when I was chairman, and the person who has followed me as chairman has said we don't have that kind of money. I have a dissertation student that is writing her dissertation with me, and I have told her to go ahead and use the Roper Archive, and she has, but generally it is just too expensive to allow students to use.
Q. In other cases have you been present when other pollsters have testified on the same subject as you have who has used the Roper Archive?
MR. GARDNER: Can you read that question back. I might need to object.
(Record read as follows:
"Question: In other cases have you been present when other pollsters have testified on the same subject as you have who has used the Roper Archive?")
THE WITNESS: I don't recall anyone having used the Roper Archive where I've testified.
BY MR. GOLDSTEIN:
Q. Is it possible that five people, or any number

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of people, could review the same material that you did and come up with different conclusions and still be accurate?

MR. GARDNER: I'm going to object to the form of the question.

THE WITNESS: Accuracy here is very subjective. Anytime you've gone to a public opinion conference and you present a paper, someone disagrees with the way you interpret the data. What I think is a fair response to that question is that someone could look at that data and not come to the same conclusion that I come to.

BY MR. GOLDSTEIN:

Q. And that doesn't necessarily mean that you're right and they are wrong or vice versa; correct?

MR. GARDNER: I'm going to object to the form of the question.

THE WITNESS: I would like to think I'm right, but I'm not omnipotent, so it is always possible someone else is correct.

BY MR. GOLDSTEIN:

Q. It is also a subjective evaluation -- when you're looking at all the data in order to come up with your opinions, you have to go through a number of different items and place certain weight on some and less on others, do you not, in forming your opinion?

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MR. GARDNER: I object to the form of the question.

Go ahead.

THE WITNESS: Certainly everybody tries to analyze this data to the best of their professional ability, and you are going to find people that are going to look at it differently. There are lots of professional disagreements in academia. So to answer your question, certainly two people could look at the same data, be people of good intent and people who are trying to do their best to find the truth and come to different conclusions.

BY MR. GOLDSTEIN:

Q. Does the outcome, the result that you reach on a particular analysis of a survey that you conduct, depend in part on the person that conducted the survey?

A. Generally not. Again, we should have all the information available on these surveys in order to make a professional evaluation of the quality of a survey. Presumably if people follow guidelines, I can look at a survey and I can judge for myself the quality of that survey. I don't have to rely on somebody else.

Q. Of course, in analyzing a survey, you're placing faith in the fact that the person that conducted the survey was not dishonest or underhanded in

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concealing facts; correct?
A. You are placing some faith in that, but there are lots of ways that I can determine if somebody is faking surveys.
Q. How? How would you do that?
A. For example, I can look at the interviewer number that a particular interviewer does. I can look at the relationship between party identification and liberal conservative ideology. Democrats should be liberal, but then I look at this one particular person and say, "Gee, for this one particular person, the Democrats are conservative" or "There's no relationship whatsoever. Maybe she is just faking the data."
There are lots of internal checks of that sort that can be done by comparing, for example, the results of a specific interview to everybody else who does interviewing and interviews that they have completed. If something is way out of line, I can then call back the respondent and say, "Hey, were you really interviewed?" Sometimes there is fraud that does occur, and we can catch it.
Q. Now, if the survey that we just talked generally about -- and I'm sure it's not a real survey, but we're just talking in hypothetical terms. If that survey omitted to talk about party affiliation or

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liberal/conservative and just simply asked one or two questions, would that not make it more difficult to place validity on it as you would not have any other data to compare with the geographic cross-section that you just described?

A. Certainly if it were simply one or two questions, no information on demographics, I think that that would make it less reliable, but not necessarily unreliable when compared to a survey that had that information.

Q. If you learned that somebody had done a survey with very limited questions but came up with a value that you felt was surprising when compared with the other data that you were exposed to, that wouldn't necessarily in and of itself give you any probative details as to why that deviation or spike occurred, would it?

MR. GARDNER: I'm going to object to the form of the question.

THE WITNESS: Again, it would depend on context. For example, there was a major increase in political trust following 9/11, so assuming that one lived on another planet and didn't know that unfortunate event had occurred and looked at a survey in July of 2001 and one from November of 2001 and saw this

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dramatic upturn in political trust, one might think, "Gee, there's something wrong with this survey in November." In fact, of course, we know the context and know that with the advent of 9/11, trust in government spiked up by a considerable margin.

BY MR. GOLDSTEIN:

Q. So do I understand correctly, then, that it is important to place survey data or results in the context of other events that occur?

A. Yeah, absolutely. Let me stress that point that you have made and say context is really crucial. You must place surveys in context. That is absolutely essential.

Q. If one does not know other forces at play, you would agree that the survey results may be of limited value; right?

MR. GARDNER: I'm going to object to the form of the question.

But go ahead and answer if you understand that.

THE WITNESS: I guess I don't quite understand the question. I mean, if I got a survey and there was no date on it whatsoever, so it might have been 1962 or it might have been 1997, and if I saw some result, yeah, I would have a hard time interpreting that.

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BY MR. GOLDSTEIN:
Q. Well, for example, if one produced a survey from the '50s and it was conducted of people that were unemployed or of low intelligence, for example -- and I don't mean that there's any correlation at all, but any factor that you would care to -- that was not considered that may have skewed the results, if you later learned an additional fact that you had not known when you first looked at it, that may cause you to change your initial beliefs, would it not?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Yeah, I'm sorry. I don't quite follow what you're saying. It wouldn't be a representative sample if it were full of unemployed people, so I don't know where you're moving from that.
BY MR. GOLDSTEIN:
Q. Well, give you an example: Let's suppose that a telephone survey was conducted on a random basis that you said occurs with frequency after 1978, and they asked a whole series of questions about opinions towards the tobacco industry, but they did not ask questions whether or not the person was employed or educated. Would the absence of those questions cause you to alter your opinion as to what weight would necessarily be

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placed on the results of that poll?
A. I would place less weight on the results of that poll, but I think that you would have to place it in context, let's say, of a good-quality survey work that had been done. If it was consistent with good-quality survey work, I would presume, not knowing anything else, that the sampling procedures were appropriate. If it was an outlier and it looked really weird, then I would think, yeah, maybe there's something wrong.
Q. What is your understanding of the position that Philip Morris expects you to advocate?
I'm not suggesting that they want you to say anything that is not your position, but what is it that you understand they expect from you relative to this case? What role do you understand you are going to play in terms of furnishing testimony at trial?
MR. GARDNER: Let me object. Object to the form of the question. I believe it's vague and/or argumentative.
Go ahead.
THE WITNESS: Philip Morris and the attorneys that I am working for expect me to do an honest, professional assessment on the data of the health hazards of smoking both at the belief level and at the

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awareness level and to render a professional opinion based upon my experience of having done many surveys -- I've written on the subject at length -- and come up with conclusions that are based on, like I said, my professional expertise.

BY MR. GOLDSTEIN:

Q. With respect to the plaintiff in this case, Mr. Reller, you understood he started smoking at what age?

A. Teenager. I don't know the exact year. Sixteen, seventeen. Is that fair?

Q. I just want to get your best recollection.

A. Okay.

Q. What is your opinion as to what information was publicly available at the time that Mr. Reller began smoking to Mr. Reller?

MR. GARDNER: Object to the form of the question.

MR. GOLDSTEIN: Let me rephrase.

Q. What information do you believe Mr. Reller had access to at the time that you understood he began to smoke?

A. Again, the amount of information that he had access to is something that is outside my field of expertise. I haven't done any systematic review of the

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information that is available. What I can do is make an inference from public opinion data, and the public opinion data show that in 1954 in June, 90 percent of the public said that they had read or heard recently that smoking may be one cause of lung cancer.

I can place that number in a group of other questions that asked the same sort of -- or introduced by the same sort of stem to the question about "have you read or heard about" something, and I can see this is very high compared to other topics in which people are asked have they read or heard. The fact that 90 percent say they have read or heard about the health hazards of smoking, to paraphrase here, leads me to conclude that there must have been a lot of information out there.

Q. Well, what survey are you referring to in June 1954? Who did that survey?

A. The Gallup survey, June 1954.

Q. Are you pretty familiar with that?

A. Yes.

Q. How much time have you spent studying that report?

A. Maybe an hour, hour and a half.

Q. Who paid for the survey to be conducted?

A. I think it was paid for by Mr. Gallup himself as part of his, I think, twice-weekly column called

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"American Speaks." He franchised in newspapers, got paid for the column, conducted surveys, topics he thought might be of interest to the public. So I presume it was paid for by Gallup Organization.

Q. Do you know whether it was done in person or by phone or what --

A. In person.

Q. Did he do it himself?

A. He didn't interview people himself. He hired the interviewers. I presume he played a major role in developing the questions.

Q. But you don't know that for sure; right?

A. I only know the general sort of procedures Gallup used at the time.

Q. How do you know that?

A. I read a book on Mr. Gallup.

Q. What is that book called?

A. Everything You Need to Know About Polling and Public Opinion or something like that. It was published in 1948. That is not the exact title, but it's something like that.

Q. How many people were part of that sample?

A. 1,500 approximately.

Q. Where was that survey conducted?

A. People went to the homes of those who were

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selected by the sampling scheme, knocked on their door and asked if they could interview the person randomly selected within the household.

Q. How was it randomly selected? Do you know?

A. Yeah. They used a scheme that randomly selects households.

Q. How did they do that in 1954?

A. They start by, I think, dividing the country into four groups, and then they would assign probabilities to large cities, small cities, towns, rural areas, and they would sample those. Then they would sample primary sampling units within those, meaning a small area that the people could get 10 or 15 people to complete a survey in so you wouldn't wind up doing one person in Los Angeles, another person in San Diego.

Q. Were they compensated for their responses?

A. The people were not compensated for their responses; of course, the interviewers were paid.

Q. What cities did they interview in? All over the country?

A. Depending on what happened to fall into the sample on the basis of chance.

Q. You don't know, though; right?

A. No. And I don't think that's included in the

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data.
Q. For example, if they went to 1,500 homes that surrounded the National Cancer Institute during Lung Cancer Week, as an example, you don't know whether that occurred or something else occurred?
A. No. But I think in the '54 data, the sample is broken down by region. I think they have nine regional breakdowns, probably in the conventional sense of "regional breakdown." I have looked at that, and they are scattered throughout the nine regions.
Q. If you were asked to do a repeat survey today of the 1954 June survey that Mr. Gallup did and you wanted to strive to really get in depth, really get more accurate meat than they got in 1954, how would you change it?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I have given that zero thought, and believe me, to do a competent survey would require a very large amount of thought. I honestly wouldn't know how to give you an answer to that that would allow me to design a survey, go to the field with it and actually do something --
BY MR. GOLDSTEIN:
Q. Do you know how many questions were in that

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survey?
A. About 30.
Q. Do you know the order in which they appeared?
A. Yes.
Q. Do you know all the questions in it?
A. Yes.
Q. You have memorized the 30 questions?
A. Oh, no. It's in my reliance file.
Q. Would the outcome vary depending on the order? In other words, if Gallup were to give differently worded questions or ones in different orders, would you expect the results to vary?
A. Again, it would depend upon the order that was changed. It would depend upon the wording that was changed. As I said earlier, I think question wording and question order are crucial. Question wording doesn't always make a difference. Question order doesn't always make a difference. It really, again, is contextual. It depends upon what specifically you have in mind.
Q. Now, when you were asked to render opinions in this case for Philip Morris, did you ask either Mr. Boman or someone else connected with him or his firm to provide you with all the data that existed in terms of surveys that were conducted in the field?

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A. No.
Q. Are you aware of whether any industry members of the tobacco industry have ever paid for any of the surveys that were conducted by Gallup?
MR. GARDNER: Object to the form of the question. It's vague.
THE WITNESS: I recall one in 1959 that, I believe, was conducted by Gallup and somebody else. I think it was commissioned by one of the tobacco companies, but I don't recall which one.
BY MR. GOLDSTEIN:
Q. Where did you obtain that?
A. I asked for it.
Q. Who did you asked for it?
A. I asked Mr. Boman for it.
Q. Did you ask him specifically for that one, or did you ask him in general, "Please give me everything that you have concerning surveys on the topic about which I'm going to testify," or words to that effect?
A. No. I saw it referenced in the trial transcripts that I read. I saw it referenced, and I asked Mr. Boman for it.
Q. And did you see a copy of it?
A. Yes.
Q. Was it a privately commissioned survey?

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A. As my understanding, it was a proprietary survey, but I don't know that for an absolute fact.
Q. Did you have to sign a confidentiality agreement to read it?
A. No.
Q. What was the subject matter of that 1959 survey?
A. Most of the questions were on advertising, and whatever the company was, they were concerned about how their brands compared to other brands. There were fewer questions on the health hazards of smoking, but there were a couple.
Q. Aside from the subject matters, what were the findings and the report's conclusions?
A. As best I recall, they thought that the brand, whatever it was, was sort of doing okay but could do better, and that people were concerned about health risks that might result from smoking cigarettes.
Q. If you wanted to ascertain whether any privately funded research projects or surveys were conducted by the Gallup Organization or its affiliates, how would you go about trying to ascertain that information?
A. Well, I would look at the Gallup Web site. I would look in the Roper Center archive. But I would

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anticipate that if something was proprietary, it wouldn't be in the public domain, and I would not expect Gallup to be forthcoming with this information if they had done work for private clients.

Q. Are you aware of the existence of any privately commissioned surveys by any member of the tobacco industry on the very subject of, say, the 1954 report that you are going to offer testimony about at trial?

A. No, I'm not.

Q. Do you have an opinion whether it would be proper or ethical in your industry for a client to withhold survey results from you that may conflict with your testimony in order to prevent you from disclosing fully all the facts on an issue?

MR. GARDNER: Object to the form of the question.

THE WITNESS: At least insofar as I base my ethics on the statement of ethical behavior by the American Association for Public Opinion Research, I don't think there is any obligation for a private client to divulge, voluntarily at least, information they have collected. They may be required to do so under a subpoena, but I don't think they have to voluntarily do so.

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BY MR. GOLDSTEIN:
Q. Do you have a personal opinion about the ethical conduct of any of the defendants in this case?
MR. GARDNER: Object to the form of the question. Vague. Broad. Ambiguous.
MR. SLADE: Also outside the scope of the witness's designation.
THE WITNESS: I'm not an expert on business ethics. I just don't have a professional opinion. I don't really know enough to have a private opinion that I feel confident expressing.
BY MR. GOLDSTEIN:
Q. In your personal life do you try to keep up with current events?
A. Yes.
Q. By what means do you do that?
A. I subscribe to The Wall Street Journal, The Houston Chronicle, The New York Times, about 15 magazines, all of which I read.
BY MR. GOLDSTEIN:
Q. Do you obtain news content on-line as well?
A. Not very often.
Q. Are you aware of any lawsuits that have resulted in a verdict against Philip Morris having been rendered in, say, the last seven or eight years since

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you first had an affiliation with Philip Morris?
A. I know Mr. Piuze won a big suit. I don't recall if the defendant was Philip Morris or some other tobacco company. I just know that he got a big victory, a big judgment a year ago or something.
Q. Are you referring to the Bullock case?
A. I don't know its title.
Q. How did that information come to your attention?
A. I think I saw it on the Web.
Q. Was it an individual smoker case?
A. I'm not sure.
Q. What was it that you recall having read about it other than Mr. Piuze and a tobacco case?
A. I didn't know it was Mr. Piuze until recently. What I recall was the very large amount of the judgment, which was billions of dollars.
Q. All right. Did you ever ascertain from any source the reason for such a large verdict?
A. No.
Q. Did that ever interest or concern you as somebody that works for or does work for Philip Morris: the fact that they would have a substantial punitive damage verdict rendered against them?
MR. GARDNER: Object to the form of the

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question. Lacks foundation.
THE WITNESS: No. I mean people lose and win lawsuits all the time, sometimes undeservedly.
BY MR. GOLDSTEIN:
Q. You don't know what it was that Philip Morris was found to have engaged in, what type of conduct?
A. No. I just know that the jury awarded the defendant a lot of money.
Q. Have you heard of any other verdicts against any big tobacco industry members in the last seven years?
MR. GARDNER: Object to the form of the question.
Go ahead.
THE WITNESS: The only other one I remember was, I think, one of the early ones where -- I forget the name of it, but somebody got, like, $400,000 in San Francisco or something like that. I think it was the first time that there had been a verdict that favored a plaintiff, but I don't recall the name, I don't recall the year, and I don't recall the attorneys.
BY MR. GOLDSTEIN:
Q. Can you tell me as you sit here -- because you seem like a very intelligent person -- I just want to know what your understanding is of what it is that these

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various people that are suing are alleging against the company that is employing you in this case.

MR. GARDNER: I'm going to object the form of the question. It's outside his expertise and, as far as I can tell, irrelevant.

But go ahead.

THE WITNESS: As long as we're talking not about my expert knowledge, but sort of what you read in the newspapers, I think that the plaintiffs say that there was misleading information given about the content of cigarettes; that Philip Morris, R.J. Reynolds, Lorillard and others knew more about the health hazards of smoking than they were forthcoming about generally, I think. I think there was also an issue about deceptive advertising.

BY MR. GOLDSTEIN:

Q. Have any of the surveys that you have reviewed in preparation for giving expert testimony touched upon either of those subjects?

A. Some that I have reviewed have touched on issues of advertising or why people have started smoking, but again, it is outside my area of expertise. I can tell you what the surveys said, but not why people start smoking.

Q. And I take it you don't have an opinion one way

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or the other of either of the two subject matters that you just went into about your understanding of why people have been suing the tobacco companies?

MR. GARDNER: Object to the form of the question.

I assume when you say "opinion," you're asking about an expert as opposed to any other sort of opinion?

MR. GOLDSTEIN: No. I'm asking if he has a personal opinion about either subject, whether Philip Morris has or has not engaged in the conduct alleged.

Q. You don't have an opinion, do you?

A. No.

MR. GARDNER: Let me get an objection in here.

I object to the form of the question.

Go ahead.

THE WITNESS: No, I do not have an opinion.

BY MR. GOLDSTEIN:

Q. You said some of the surveys that you reviewed touched upon those subjects matters, and I would like to know first those surveys that you reviewed that touch upon the issue of concealment of known health risks or alleged concealment of known health risks.

A. Well, there are, of course, the questions that ask, "Is or is not smoking one of the causes of cancer?"

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That has been asked a number of times. There is the question, "Is smoking harmful to health?" Again, it's been asked many times. There are a number of questions asked in the report by the US Public Health Service that inquire as to people's beliefs about the health hazards of smoking. Examples -- and I can't recall them all, but I can recall some examples, such as, "Smoking is not hazardous to women; agree or disagree?" There are a variety of questions in those US Department of Health surveys that address the health hazards of smoking that are in my reliance file. I'm sorry that I can't recall them verbatim off the top of my head.

Q. To take as an example the question that you were positive about, "Smoking can be harmful to women; yes or no?": Is it correct that you could greatly vary the results to a single question based on a certain structure of the question?

A. Yes.

Q. Do you recall as you sit here today, with reference to whatever survey that one question came from, what the response was and when the survey was taken?

A. Yes. The survey was taken in 1964, and my ballpark recollection is that about 75 percent disagreed. That is, the question as I recall it

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reads -- it's actually a statement -- "Smoking is not harmful to women." And again, that's a paraphrase because the sentence is actually a little bit more complex, but a very large percentage disagreed with that.

Q. Generally if one makes longer questions on a survey, how does that affect the negative or affirmative response ratio?

MR. GARDNER: Object to the form of the question.

THE WITNESS: Again, it's very context driven. Some short questions can be very ambiguous, and some fairly long questions can be fairly clear. It is really an issue of the specific question and how it is worded.

BY MR. GOLDSTEIN:

Q. You can't draw any generalities based on the length of the question itself; right?

A. No. Because in my own work I use some very long questions, and I think they wind up being quite reliable.

Q. Were there any reports that you are aware of that found contrary results to those which you are offering testimony about here?

MR. GARDNER: Object to the form of the question.

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THE WITNESS: I guess I'm not exactly certain what your question is. Could you restate it a little bit differently.
BY MR. GOLDSTEIN:
Q. Yes.
If I understood what you said previously, you are prepared to testify at trial, if called to testify, that it was very widely known about the health risks at or about the time that Fredric Reller started smoking; is that accurate? Did I understand your previous answers correctly?
A. Yeah. I think at the time Mr. Reller began smoking, people were aware of the health risks of smoking.
Q. Now, when you talk about awareness of smoking --
A. The health risks of smoking.
Q. Right. When you're speaking about the awareness of the health risks of smoking, that in and of itself doesn't quantify the extent of knowledge that a person has; correct?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Well, I think what you can infer from that question is actually the content of the

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question; in other words, my interpretation is they are aware of the scientific community's conclusion that smoking may be a cause of lung cancer.
BY MR. GOLDSTEIN:
Q. Now, in the surveys that were conducted in 1954 that we talked about previously, was there a question as to addiction and the addictive properties of smoking contained on that survey?
A. To the best of my recollection, no. But if you want me to look in my reliance file, we can check for certain.
Q. Was there knowledge that you have found in your survey results in 1954 as to the addictive properties of tobacco?
A. I don't recall a question asked in the '54 survey, with the caveat that I don't have it in front of me.
Q. As you sit here today, can you tell me when the first time you're aware of, having seen results from surveys you reviewed, that suggest that the addictive properties of tobacco were widely known in the public?
A. I can't think of a specific item that would answer your question. Let me tell you what comes to mind from the top of my head -- and again with the caveat that there may be others -- is that Gallup has on

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occasion asked those who are cigarette smokers, "Do you think you are addicted?" I think the first time that was asked was probably early '80s. Doesn't mean there weren't others. I just don't recall them off the top of my head.

Q. Would you agree, though, that that's like perhaps asking an overweight person if they think they are fat?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I think probably that analogy isn't exactly complete, but I do think that addiction has become less stigmatized now than it was in the 1950s. Easier to say yes.

BY MR. GOLDSTEIN:

Q. I didn't mean to talk about the stigmatic qualities of the question.

A. Okay.

Q. What I meant was there was nothing in the survey data which would indicate whether a person can honestly perceive themselves -- in other words, a cigarette smoker would honestly perceive whether or not they're addicted or whether they continue to smoke because they choose to; correct?

A. That's an area really outside my expertise. I

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can comment on the question and its format and what it shows, but to the extent that any one individual is or is not actually addicted would require somebody who is skilled in the psychology of addiction.

Q. Are you aware of an organization called Gallup Robinson or anything of that name? Does that ring a bell?

A. No.

Q. So if I asked you if you'd ever heard of a report called the Gallup Robinson survey from 1973, that would be something you are not aware of; correct?

A. Off the top of my head I'm not aware of it.

Q. My understanding, it was a special presentation that was made for Philip Morris. It was commissioned by Philip Morris, and it talked about the awareness of smokers and had a bearing on many of the issues that you're going to testify about at trial.

Does any of what I've just mentioned to you ring a bell at all?

A. No, not really.

Q. Are you aware of any documents from the Gallup Organization, or any affiliates, that have emerged in other cases purporting to consist of surveys that were performed for Philip Morris on public opinion involving cigarette smoking?

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A. Off the top of my head I don't recall any.
Q. If such a report did exist, would you want to review that in connection with your providing expert testimony in this case?
MR. GARDNER: Object to the form of the question. Lacks foundation.
BY MR. GOLDSTEIN:
Q. Go ahead.
A. Yes. I would like to review anything that is relevant to my work, my research in this case.
Q. If there was a whole quantum of material that you didn't have access to from Philip Morris or that was deposited in a public archive that was presented to you, might that change your opinion as to whether or not the information you are going to testify about is accurate at trial?
A. No idea --
MR. GARDNER: Let me get an objection in first.
Object to the form of the question. Lacks foundation.
Go ahead.
THE WITNESS: I have no idea what are in these possible reports, so I really have no opinion.
BY MR. GOLDSTEIN:
Q. But you don't have any sources to go to other

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than either those which are given to you voluntarily by a client or publicly available; correct?

MR. GARDNER: Object to the form of the question.

MR. GOLDSTEIN: Let me rephrase.

THE WITNESS: Just so the record is clear --

MR. GARDNER: Hold your fire. He wants to rephrase.

BY MR. GOLDSTEIN:

Q. With respect to the testimony you are going to give in this case, you don't have access to materials other than those that are publicly available and those that may be provided to you by the client; correct?

A. That's what I have access to. But again, I want to make clear that nothing has been provided to me by the client other than things I've requested. So what I have access to is the public information that is available to anybody and then specific requests that I have made to Shook Hardy regarding information that I have run across in my research or in reading trial testimony of either plaintiff or defense witnesses in tobacco litigation.

Q. Now, I understand that you are generally familiar with an entity called the CTR; is that correct?

MR. GARDNER: Object to the form of the

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question. Assumes facts not in evidence.
THE WITNESS: No.
BY MR. GOLDSTEIN:
Q. You are not?
A. No.
Q. Well, in fact, you gave a deposition in another case and you did testify that you were familiar with it, did you not?
A. You're going to have --
MR. GARDNER: Hold on.
Object to the form of the question. It's argumentative.
THE WITNESS: Perhaps if you use the actual name of the organization rather than its letters, I might recognize it.
BY MR. GOLDSTEIN:
Q. Okay. Counsel for Tobacco Research, does that ring a bell?
A. Yes, I've heard of it.
Q. What is your understanding of what the Council for Tobacco Research was or is?
MR. GARDNER: Object to the form of the question. Outside the witness's expertise.
THE WITNESS: The answer is I don't know.

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BY MR. GOLDSTEIN:
Q. So as you sit here today, you don't know anything about what the Council for Tobacco Research is?
MR. GARDNER: Same objection.
THE WITNESS: I would have to guess based on the name, but I really don't recall what they do.
BY MR. GOLDSTEIN:
Q. Have you ever heard in any of the magazines or newspapers that you review that Philip Morris has alleged to have participated in a scheme of giving public disinformation as to known health risks? And when I say "known," I mean known to Philip Morris?
A. Would you rephrase, please.
Q. Have you ever heard that Philip Morris is alleged to have suppressed known health risks from the public; that Philip Morris was in possession of known health risks beginning in the '40s or '50s and suppressed that information and gave false information to the public which it knew to be false? Have you ever heard that before?
MR. GARDNER: Object to the form of the question. It's argumentative.
THE WITNESS: I have done some general background reading, and in my general background reading the authors who have written about the tobacco wars have

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alluded to that allegation.
BY MR. GOLDSTEIN:
Q. But as you sit here today you don't know whether that is true or false; correct?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I have no expert knowledge that would allow me to render that judgment.
BY MR. GOLDSTEIN:
Q. Have you reviewed the deposition testimony of Mr. Ferree either in this case or any other cases he has testified in?
A. I reviewed trial testimony that he gave several years ago. I understand he was recently deposed. I have not reviewed or seen his recent deposition.
Q. Have you ever reviewed either a summary or the actual transcript of his testimony?
MR. GARDNER: Object to the form of the question. I believe it's asked and answered. Maybe I misunderstood.
BY MR. GOLDSTEIN:
Q. I know you've said you understood it. Can you tell me as best you can recall what it was specifically that you recall. If you know a particular case name or --

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A. I don't recall the case. I'm trying to think of specifics that were in that trial testimony. They just really escape me for the moment.
Q. Was that in the Boeken case?
A. The name rings a bell, but I don't specifically recall.
Q. Have you reviewed any documents from the Boeken case in connection with your providing expert testimony for Philip Morris?
A. Again, these names all kind of run together. It's not out of the question, but I really can't link a case name with specifics.
Q. Let me just cover some personal issues and we'll get back to that stuff.
Do you maintain an address in South Dakota?
A. No.
Q. Do you recognize this address: P.O. Box 01058971 in Sioux Falls, South Dakota?
A. No. But I'm interested as to why you would ask.
Q. Is Banks your wife's maiden name?
A. She is the woman I have lived with for 25 years. We are not legally married, but we she's been my companion for 25 years.
Q. Who is Michael Von Seebach; do you know?

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A. Yes. He owned the house that I bought in 1992 or '91.
Q. What is an entity named the Rose Foundation?
A. The Rose Foundation is a foundation that I created as chairman of the political science department to put funds that were raised by various members of the department or by a book that I was co-author. The money was put into the Rose Foundation, which is nonprofit. I then write checks out to the university to help defray expenses of the political science department.
Q. What about Tedin Farms, Inc.: What is that?
A. I grew up on a farm. My sisters and I now own part of that farm along with my mother, and it is incorporated in South Dakota.
MR. GOLDSTEIN: Off the record.
(Discussion held off the record.)
BY MR. GOLDSTEIN:
Q. Doctor, in this box of reliance materials, I would like you to take a look at that and identify for me whether those are the materials that you relied upon in forming your opinions in this case?
A. Yes, they were.
Q. Is there a summary or a list of those?
MR. GARDNER: I don't have any summary with me, no.

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MR. GOLDSTEIN: Then what we should is mark each one and have them read into the record.
MR. GARDNER: If you want to.
MR. GOLDSTEIN: I'd rather do it another way, but I guess there is no easier way.
Q. Maybe what you can do is take them out of the box and read them into the record what they are.
MR. GARDNER: What you could do is mark them all as Exhibit 1, and then you will have them. They won't go anywhere, and you won't have to tediously read them all into the record.
MR. GOLDSTEIN: I understand, but I don't want to burden the court reporter with copying all these.
Q. What you have before you is a stack of materials several inches high, maybe 4 or 5 inches high. That contains the different survey data that you are testifying from and relying upon?
A. That's correct.
Q. Obviously you are not relying upon your bills you have sent in or your vitae; right?
A. That's correct.
Q. Okay. So why don't you exclude that when you go through.
MR. GARDNER: He just wants the stuff you are relying on.

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THE WITNESS: You want me to go through them item by item? Is that --
BY MR. GOLDSTEIN:
Q. Yes. If you could read, just them into the record.
A. This is a cross-tabulation of a --
MR. GARDNER: Let's go off the record for a second.
MR. GOLDSTEIN: Okay.
(Discussion held off the record.)
MR. GOLDSTEIN: We had a brief off the record discussion. For purposes of convenience, we'll just mark all of the materials that you have produced here today consisting of reliance materials as Exhibit 1 to the deposition.
(Whereupon, Exhibit No. 1 was marked for identification.)
BY MR. GOLDSTEIN:
Q. Could you now identify for me, except for some of the excerpted pages which I think we've put at the bottom of the stack here, the individual -- what you described as having obtained from the Roper Archive.
A. How do you want to mark these? Is this Exhibit 2 or --
Q. No. Just describe for me, if you would, what

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each of the reports is, maybe by title.
A. This is called "A Growing Epidemic" by Saul Kelsey, MD. It is a survey of the beliefs about the health hazards of smoking among teenagers in Toledo and Lucas County, Ohio public schools.
Q. What date is that?
A. It is in the American Journal of Public Health, September 1975.
Q. All right.
A. This is by Paul Brace and Associates called "Public Opinion in the American States: New Perspectives Using National Survey Data."
Q. What is the date on that?
A. It is January 2002.
Q. All right.
A. This is "What Moves Public Opinion" by Benjamin Page and Associates. Its date is March 1987.
Q. Okay.
A. This is "Public Opinion in America," by James Stimson. Its publication date is 1999.
This is "Mail Surveys for Election Forecasting" by Peggy [sic] Visser and Associates, and its publication date is 1996.
Q. Okay.
A. This is an excerpt from a book entitled

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Questions and Answers in Attitude Surveys by Howard Schuman and Stanley Presser. It was originally published in 1991. This reissue is 1996.

This is an excerpt from a book by John Geer called From Tea Leaves to Opinion Polls. Its publication date is 1996.

This is an article called "Measuring State Partisanship and Ideology wit Survey Data" by Gerald Wright and Associates. It was published in 1986.

This is a document called "A Teenager Looks at Cigarette Smoking." It was conducted by the American Cancer Society, and its publication date is September 1969.

These are excerpts from a document called "Use of Tobacco: Practices, Attitudes, Knowledge and Beliefs, United States, Fall 1964 and Spring 1966." It was conducted by the Department of Health, Education and Welfare, its subcabinet office of the Public Health Service.

This document is entitled "Report of an Educational Program Regarding Cigarette Smoking of High School Students" by Stanley Beckerman, and its publication date is -- I don't see its publication date immediately. Apparently it's early 1960s. I think it was '63, maybe '62, but for some reason it's not

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included on this particular document.
This document is entitled "Report of Survey on Adolescent Smoking Behavior" by Donald A. Leton, and its publication date is September 1964.
Q. That completes those reports that you have as opposed to the page printouts.
A. Yes. Like I said, these are mostly page printouts. There are a few things that are not. There are some dictionary definitions in here. There are some definitions of what is a supermajority. Some things I have pulled off the Net. The bulk of this is data that I will rely on for my testimony at trial time.
Q. The 1954 report that we talked about, the survey that we talked about before the lunch break, do you have a copy of that here?
A. Yes, I do.
Q. Where is that?
A. It is in here, and if I didn't get out of order, it should be close to the top since it was '54 and this is chronological.
I believe this is it. Yes. This is a copy of the questionnaire.
Q. It has an exhibit stamp at the bottom. Do you know what case that is from?
A. No, I do not.

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Q. This was not something you had in your possession before -- I mean, that you supplied to Shook, Hardy & Bacon; this is one of those that they supplied to you?

A. No. I don't know why that particular document has an exhibit date on it. It might have been attached to something else. I bought the original data, and they sent me that document, so I have it originally from the Roper Center. It simply might be that they had it in their possession at Shook Hardy and used one in their possession as opposed to the one that I purchased directly from Roper.

Q. Now, I know we talked about this previously: Is this the one of the documents in which you place a substantial amount of reliance for rendering your opinions?

MR. GARDNER: Let me object to the question. Vague and ambiguous as to that term, "substantial."

BY MR. GOLDSTEIN:

Q. Since we're dealing in technical, semantic issues, tell me the degree of reliance which you placed on this particular report compared with some of the other things that you identified in your reliance materials?

A. It is one of the more important documents

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because it is the 1954 data. It is the first year we really have reliable public opinion data that we can investigate issues regarding the health hazards of smoking. So it is one of the data sets that I will rely on to a larger extent than, say, things that might have been -- surveys that might have been done in the '70s or '80s or something like that.

Q. Now, have you ever heard of the term "present-mindedness"?

A. Yes.

Q. What does that indicate or mean to you?

A. It means the tendency of people living in the year 2003 to interpret events in the 1930s through the sort of everyday experiences we have living in 2003 and not really appreciate that things weren't like they are now in 1930.

Q. To what degree is that a factor that one has to take into account when evaluating data -- when testifying in 2003 about data that relates to, say, 1954?

A. Well, I think the data that was collected in 1954 speaks for itself in the sense that presumably the people that wrote the questionnaire were competent and wrote it with the present mind of living in 1954. So I don't think there is anything that needs specifically to

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be considered regarding present-mindedness when one looks at that particular data about -- again, you need to think about the circumstances of 1954, and they are not quite the same as they are in 2003.

Q. For example, as a general proposition, would you say that in 2003 it is widely accepted in the general public that there is a high degree of correlation between smoking and lung cancer?

MR. GARDNER: Let me object to the form of the question.

You can go ahead and answer it.

THE WITNESS: I think there is a widespread understanding that smoking is one of the causes of lung cancer in the year 2003.

BY MR. GOLDSTEIN:

Q. To a greater extent than it existed in 1954?

MR. GARDNER: Object to the form of the question.

THE WITNESS: Yes. I think currently the understanding of the link between smoking and lung cancer today as we speak, 2003, is greater than it was in 1954.

BY MR. GOLDSTEIN:

Q. Do you have any knowledge whether or not Philip Morris, as an example, posts anything on their

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web sites concerning the risks of smoking and their correlation to lung cancer?

A. I don't recall. I've looked at the Philip Morris Web site. It was several months ago, but I don't recall if they specifically issue warnings. I know they do say something like, "We agree with the opinion of the medical community that cigarettes are a health hazard," and in some sort of language "a cause of lung cancer," and in some sort of language "possibly addictive." But I don't know if they issue a warning, per se. I just don't recall.

Q. Is it possible to quantify in some manner the difference between the understanding that you believe is generally understood in the public 2003 as compared to 1954?

A. Well, what one can do is compare like-worded questions. To the extent questions are worded in the same fashion or worded in a very similar fashion, we can compare the two as long as the difference in wording is of no consequence with the way the question is asked.

Q. Well, one can do almost anything, but do you think that would produce valid results?

A. Yes. I think --

MR. GARDNER: Hold on.

MR. GOLDSTEIN: Object to the form of the

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question.
Go ahead and answer.
THE WITNESS: Yes, I think it would produce valid results. I think comparing a -- to be specific, an item that is worded exactly the same in 1954 to one worded exactly the same in 2003 can provide useful insight into the way opinion has changed.
BY MR. GOLDSTEIN:
Q. What other reports of those reliance materials that you've identified do you place an equal or greater reliance on than the 1954 report that we've just been talking about?
A. I don't think there is anything in there that I would place perhaps more reliance on. One survey I will place a lot of reliance on is the 1964/1966 Health and Human Services survey conducted through the Public Health Service.
Q. Now, in 1954 your testimony is that it is your belief, based on your review of the survey data, that there was widespread awareness of the existence of a link between lung cancer and smoking?
MR. GARDNER: Object to the form of the question. It's already been asked and answered.
But go ahead.
THE WITNESS: Insofar as we're talking

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specifically about the question that was asked in 1954, which reads approximately, "Have you read or heard recently that smoking may be a cause of lung cancer?" and in June of 1954, 90 percent said yes, my conclusion is that the public was aware of the conclusions of the scientific community and the medical community that there may be a link between smoking and lung cancer.

BY MR. GOLDSTEIN:

Q. Is there a difference between awareness and belief?

A. Yes.

Q. Is there also a difference between the extent to which one has a belief, in other words, a slight belief, a deep belief? Is there any way to quantify variations in the amount of belief that somebody would place on a particular subject?

A. It is very difficult to do so. Survey data tends to be sort of naturally bipolar, that is, it's pro-con; you believe it, you don't; you favor it, you don't. It's not like, for example, the physical world. We look at that light up there and say, "How bright is that light?" That has gradations that would fall along a continuum.

We sometimes do use survey data where we separate it into "I somewhat believe" or "I strongly

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believe," but I don't think that is very useful for studying the level of opinion. It is sometimes useful from within survey analysis. For example, if you were doing a survey on gun control, we might look at differences within the sample between men and women and the extent to which they strongly or somewhat believe there ought to be a mandatory registration of handguns. I don't think those sorts of qualifiers are very reliable to set the level of public opinion.

Q. Now, you said that in response to the January 1954 Gallup Organization survey, that there was, I believe, a 90 percent awareness of some kind of a connection. Was there anything in that survey that indicated the extent to which there was a belief as to different ailments that one could get from smoking?

MR. GARDNER: Object to the form of the question. Misstates prior testimony.

BY MR. GOLDSTEIN:

Q. I'm sorry. Did I misspeak in my question to you for what you gave your --

A. I understand what your question is.

Q. Okay.

MR. GARDNER: Just one point of clarification: Are we talking about January or June?

MR. GOLDSTEIN: I'm sorry. The one that he put

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in front of me is January 9 through 14, 1954.
Q. Is there also a June report?
A. There is a June report.
Q. When you answered previously about placing the reliance, did you mean to include both January and June?
A. Yes, I did.
Q. Okay.
A. And the 90 percent read or heard is from the June 1954 survey.
Q. Thank you.
A. The January has the same question, but the percentage is 83 percent.
Q. Do you have the June report as well?
A. I don't believe so. I think what we have are just printouts from the Roper database. I don't believe I have the actual copy of the questionnaire.
Q. But even if you didn't produce it today, in giving your answers, you're relying on that; right?
MR. GARDNER: I'm going to object to the form of the question. "You're relying on that," I want to make sure we're all on the same page.
BY MR. GOLDSTEIN:
Q. You do not have in front of you a copy of the June 1954 report, but in your answers previously you said that was one of the documents you were placing a

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substantial amount of reliance on; is that correct?
A. I'm placing a substantial amount of reliance on the data I obtained from the Roper Center that looks like these printouts I showed you, and it shows the answers to the questions that were asked in June of 1954.
Q. I just want to establish that even though we don't have that report here, it doesn't change your answer?
MR. SLADE: The point is, it's in the stack. What he's saying is the June data he is relying on is in the stack.
MR. GOLDSTEIN: Okay.
MR. SLADE: That's all I wanted to make clear.
THE WITNESS: It is in the stack, but the questionnaire is not, to my recollection anyway.
BY MR. GOLDSTEIN:
Q. Okay. Thank you.
Does the June data quantify the number of people responding to the questionnaire that believe that smoking can cause cancer?
A. Yes. That question is in the June 1954 Gallup study.
Q. Can you pull that out? I don't want to put you to a lot of trouble, but --

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A. Sure. It's the same for both years actually. I know it's 41 percent, having looked at it numerous times. This may be that way. Here is that for June, and here is that for June.

MR. GOLDSTEIN: Why don't we have these two documents marked as next in order, No. 2.

MR. GARDNER: As long as the record is clear that they're also part of his reliance materials. We originally marked them all as Exhibit 1. I just want to make sure we're clear.

MR. GOLDSTEIN: Right. But if we're going to refer to it --

MR. GARDNER: I understand. I understand. That's fine.

(Whereupon, Exhibit No. 2 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Of the two documents you just handed me, show me where it says "41 percent," if you will. You're adding the qualified yes and then --

A. Right. If you added the qualified yes, it would actually be 42. Gallup, in its public reports of this particular information, has added the two together and comes up with 41 percent, although I guess if you added them together, it would be 42, but that's the

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conventional way the data has been presented by Gallup.
Q. Do you have any information as to the extent to which the average teenager, say, in 1954 understood the risks they were taking when they began smoking during that period of time?
A. I'm unaware of any survey data on teenagers that was conducted in 1954. I think the way one might make some inference about that would be to look at the youngest cohorts in a national survey, that is, those under 24 years of age.
Q. Well, again, my question was specifically teenagers, and that would include people that were outside the teenage years; right? I mean, under 24 could include people 23, 22, 21, 20.
A. Let me make it clear: I'm not aware of any survey data on teenagers and their perceptions about the health risks of smoking in 1954.
Q. Looking at the Gallup data in the public domain, it's difficult to conclude that that existed; correct? In your answer you included the Gallup data as well?
MR. GARDNER: I'm going to object to the form of the question.
Go ahead.
THE WITNESS: I guess I need a clarification of

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the pronoun "that."
BY MR. GOLDSTEIN:
Q. There was nothing that you ran across in the Gallup data in the public domain that referenced whether any surveys were conducted as to whether average teenagers in 1954 understood the risks they were taking when they began smoking?
A. Yes, that's correct: I ran across no surveys in 1954 of teenagers.
Q. In reviewing the 1954 Roper surveys -- and I'm using them in the plurals to mean January and June --
A. Uh-huh.
Q. -- is there anything in those surveys which would indicate what a person could have reasonably been expected to know about the risks of tobacco when they started smoking? Anything disclosed there?
MR. GARDNER: Object to the form of the question.
Go ahead and answer it if you understand it.
THE WITNESS: I'm sorry. Could I get you to restate it. It's my fault for not listening carefully enough.
MR. GOLDSTEIN: We'll just have it read back.
THE WITNESS: Could you read it back, please.

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(Record read as follows:
"Question: Is there anything in those surveys which would indicate what a person could have reasonably been expected to know about the risks of tobacco when they started smoking? Anything disclosed there?")
MR. GARDNER: Same objection.
THE WITNESS: I'm not sure I understand the question. Let me ask: Are you trying to get at public documents that might have been examined by respondents or something like that?
BY MR. GOLDSTEIN:
Q. Well, I want to draw a distinction. You have said that there was -- based on the survey that you have been discussing, 1954, that there was widespread knowledge, and apart from the widespread general knowledge -- I mean, there may be widespread knowledge about UFOs, for example, but in terms of specifics about what risks a person knew they were being reasonably expected to know about when they commenced smoking tobacco, I want to know if there's anything in your research which would reveal the extent to which that was responded in the affirmative?

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MR. GARDNER: Object to the form of the question.

Go ahead and answer it if you understand it.

THE WITNESS: There was a question in there that asks about, "Is smoking harmful?" There's a question that asks, "Is or is not smoking one cause of lung cancer?" I think those questions address the possibility of a health hazard if one were to begin smoking.

BY MR. GOLDSTEIN:

Q. Let me flip the question around a little bit: In looking in the June data figures that you have there, can you tell me what percentage of those that responded to the survey believed that smoking was not associated with health risks?

A. In the June 1954 survey and the question reads here, "Do you think cigarette smoking is one of the causes of lung cancer or not?" 29 percent say no; 28 percent say no opinion; there's a qualified no, so let's add that to the no and make it 30; and a qualified yes, let's add that to yes and make that 42.

Q. So the majority of people that responded to the questionnaire did not respond affirmatively to the question of whether it caused health problems; right?

MR. GARDNER: Object to the form of the

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question. Go ahead.
THE WITNESS: Yes. 42 percent, as I said, gave yes to the answer. That means 58 percent gave some answer other than yes.
BY MR. GOLDSTEIN:
Q. Do you have a list of what those answers were?
A. No. I think the question simply ends when somebody says no, no opinion or yes.
Q. Did either of the January or June 1954 surveys get into specifics in terms of the ailments that people responding to the questionnaire were asked about the connection between smoking and any of those other ailments?
A. There was a question in -- and again, I don't recall if it's the January or June survey. I think it's the January one, and you have that.
Could I please look?
Q. Sure.
A. Ah, yes. In the January 1954 survey there is a question which asks, "Do you think cigarette smoking is harmful or not?" If the respondent said yes -- and 70 percent said yes -- they are then asked, "In what way do you think cigarette smoking is harmful?" and then the respondents gave an open-ended answer and those open-ended answers were subsequently recorded and coded.

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Q. Do you have the results of that coding?
A. I believe so.
I've seen it in here and I know it's here. Pardon my taking your time, but --
Q. No, it's okay.
A. Well, I know it's in here, but I don't see it. We can do one of two things: I know it so well that I can probably recall most of it from memory.
Q. Okay.
A. Alternatively, I can pull it up in two minutes off the Internet and print it out.
Q. That's okay.
A. I saw that when I put the thing together. I probably can answer your questions with some confidence from memory.
Q. Let me just ask you some questions because I have something that might assist me in asking questions.
A. Okay.
Q. The 70 percent number you testified about was the percentage number of people in the results that indicated there was widespread belief in 1954 that smoking was, quote/unquote, harmful; correct?
A. That's correct.
Q. Was there a definition of "harmful"?
A. No.

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Q. So the lack of a definition can vary results widely in your experience as a pollster; correct?

MR. GARDNER: Let me object to the form of the question.

THE WITNESS: It is not common in polling to define questions for respondents. It is common simply to ask a question and allow the respondent to define it for themselves.

BY MR. GOLDSTEIN:

Q. I see in something I'm reading that there was a top-of-the-mind recollection in awareness that it caused cancer. It was extremely low at 7 percent; would you agree with that?

A. I would agree with that.

Q. Actually, it was like 6.6 percent or something like that; right?

A. That sounds approximately correct. I think that is within a percent; put it that way.

Q. So that of the 70 percent that responded "harmful," less than 10 percent of those people felt that there was an awareness that it caused cancer; correct?

MR. GARDNER: Object to the form of the question.

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BY MR. GOLDSTEIN:
Q. I'm trying to understand in common, simple lay terms what that means, if you could clarify that.
A. I'll clarify the response first so we're sure: Of the 70 percent that said it was harmful, about 7 percent when asked, "Is this harmful?" gave the response it causes cancer, lung cancer, throat cancer, something like that.
Q. So in your mind does that suggest that the majority of the people that responded were unaware that smoking was a cause of cancer?
A. No, it does not.
MR. GARDNER: Hold on.
Object to the form of the question.
Give me just a second.
THE WITNESS: I'm sorry.
MR. GARDNER: That's all right.
BY MR. GOLDSTEIN:
Q. With respect to the 7 percent figure in awareness of cancer, is it not a correct statement -- I don't mean to fence with you on this, but I just want to have your understanding on this whether or not that would suggest that less than 10 percent of those that actually responded affirmatively to the question about smoking being harmful -- less than 10 percent of those

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that actually responded it was harmful found that cancer can be caused from smoking; is that right?

MR. GARDNER: Object to the form of the question.

Go ahead and answer if you understand it.

THE WITNESS: Again, just to recap: The question says, "Is smoking harmful?" Among the 70 percent they are asked, "In what way is it harmful?" Very nebulous, open-ended questions like this often have a gigantic scatter across the number of responses that are given because of what we know about the psychology of the survey response; that is, people respond to surveys not by going into long-term memory. They don't have opinions in a file drawer and just pick them out, but rather they construct an answer based on considerations at the time of the survey.

So in the case of an open-ended question like this, it is so nebulous, you get a variety of responses that happen to be at the top of a person's head at the moment. This is characteristic of virtually all open-ended questions. It's as if you were to ask, "What person, living or dead, do you most admire?" The winner of that little pop quiz may get a total of 10 percent of the total number of responses.

Now, if we were to look at that particular

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data, we see things like, if I just look at that group that says it's harmful and then I just look at what percentage of that particular group says smoking is one of the causes of lung cancer, you find that of those people who say it's harmful, if you look at the extent to which they think it is one cause of lung cancer, 52 percent say it is.

If we even go a little bit further, there is a response that is very frequent in those open-ended questions, and it is, "Smoking causes lung or bronchial problems." If I look at that group, about 30 percent of the total respondents that say smoking is harmful, say bronchial problems, lung problems. If you look at that response, you'll see 62 percent say smoking is one cause of lung cancer.

I think what we're seeing here -- you talked a little bit about present-mindedness, and again it reminds me of -- in the 1950s cancer had some sort of a taboo attached to it, much like AIDS in the early 1980s. Some people weren't willing to talk about it, and it surprises me that so many people say smoking causes lung problems, bronchial problems. More say that in this 1954 survey than the survey asked many years later in 1999. I think one of the conclusions --

MR. GOLDSTEIN: Move to strike.

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Q. Only because I think that's outside of your area of expertise.

MR. GARDNER: Well, we're talking public opinion polling, but that's okay.

BY MR. GOLDSTEIN:

Q. How do you know there was a taboo attached to cancer similar to AIDS in 1954?

A. Well, when I saw this data, I mean, one of the things that somebody who is a specialist on public opinion has to do is try to put the results in context. The data do not speak for themselves, so one of the jobs of somebody in my field is to try to interpret the data. The reason that I know that, first and foremost, is that I grew up -- you know, I was nine years old, ten years old in the 1950s, and I remember that as a personal experience. And I just looked at a book on the history of cancer, and one of the comments in the book was that, well, cancer is undergoing an evolution in meaning.

MR. GOLDSTEIN: If he is going to testify about his personal opinion or books he's read, we're going to be here all day.

Q. I mean, is that going to be an opinion you're intending to offer at trial?

MR. SLADE: Well, if you ask him a question, then --

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MR. GARDNER: You asked the question. Get the answer.
THE WITNESS: The problem is I can't answer the question --
MR. GARDNER: It's fine. You don't have to argue with him.
THE WITNESS: I'm sorry. My apologies.
BY MR. GOLDSTEIN:
Q. Where did you grow up in 1954?
A. Ross Holt, South Dakota.
Q. What book did you read that talked about the taboos associated with cancer in 1954?
A. I don't recall the title. It was just something I picked out of the library and paged through. I didn't even check it out of the library. I just paged through it and read some sections on it.
Q. So there'd be no way you could identify that book?
A. I can't do so as we sit here today.
Q. That was not done as part of your research in connection with testifying in this case; correct?
A. No. I had not planned to testify on that matter. It was in response to your question.
Q. When you're talking about awareness and you're interpreting the awareness number being high at

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90 percent, is it not a correct statement that a majority of the people that were surveyed did not express a connection that they understood between smoking and lung cancer in response to the 1954 survey?

MR. GARDNER: I object to the form of the question.

THE WITNESS: Again, going back to the specific question, the specific question read --

BY MR. GOLDSTEIN:

Q. I believe it was, "In what way do you think cigarette smoking is harmful?"

A. Yes. And again, the response is generally -- just to give a quick summary -- 42 percent said yes, it was one of the causes of lung cancer; 58 percent gave some other answer. So your characterization that it is not a majority is correct.

Q. What question number were you referring to from the survey? I was referring to No. 14B of the January survey.

A. You are referring to, "In what way do you think cigarette smoking is harmful?"

Q. Yes.

A. Is that your question?

Q. Yes.

A. Okay. Could you please restate your question

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about that particular item.
Q. I asked: Is it not correct, based on the answer that was given to Question 14B, that less than 10 percent of all of those that responded to the survey identified cancer as one of the ways that cigarette smoking was harmful?
A. Yes, that's correct in the sense that --
Q. That's fine. That's --
MR. GARDNER: Wait, wait, wait. No, no, no. Let him finish his answer.
THE WITNESS: I just want to be sure we're on the same page is all. I'm not trying to be difficult to deal with here.
Of those who said they thought cigarette smoking was harmful and said yes, about 6, 7 percent mentioned cancer as one of the harms.
BY MR. GOLDSTEIN:
Q. You do acknowledge that there is a substantial difference between awareness and belief in interpreting the 1954 survey?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Awareness and belief are. I agree with that.

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BY MR. GOLDSTEIN:
Q. Can you express for me when you say those two terms what you understand their meaning to be.
A. "Awareness" means a realization that some information exists. "Belief" is saying that someone considers a particular statement to be true. I think those are fair characterizations of the two concepts.
Q. Do you dismiss or discount the findings in 14B in rendering your opinions in this case?
A. I don't discount them. I put them in context. For example, in 1954 in this question, 5 percent of the respondents say that -- or mention lung cancer as one of the harms that smoking causes. Now, this question is asked again in 1999, and it's interesting that in 1999 the number moves from only 5 percent to 10 percent at a period, I think, when at least a large number of people would agree that it is very, very well known that smoking is one cause of lung cancer. But still we see only 10 percent in answer to the question "Why is smoking harmful?" Only 10 percent say that it is a cause of smoking.
It is important to understand this in context because this is a fundamental characteristic, an innate characteristic of an open-ended item, and we must look at that and interpret that knowing what we know about

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how everyday respondents answer open-ended items.
Q. Have you prepared open-ended questions in some of the various hundreds of polls that you have been involved in?
A. Yes, I have.
Q. Do you think they are any less valid than those that are closed-ended?
MR. GARDNER: Object to the form of the question.
THE WITNESS: They get at different types of information. Sometimes you want to use an open-ended question for a specific reason, which is, you don't know what sort of responses people are going to give; you don't want to read them 20 or so categories. But it is not that case that one is or is not more or less valid than another. It is a question of looking at it in context, interpreting it in context, and knowing these are the general characteristics of how people answer open-ended questions; what can we learn by this open-ended question given what we know about generally how people answer open-ended questions.
Q. Have you ever heard that open-ended questions sometimes lead to an unbiased response, in other words, a non-suggested response?
A. I've heard it said that open-ended questions

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sometimes lead to a non-suggested response. I'm not sure that I've heard the claim that it is not biased.

Q. Is there some validity to allowing the respondent to fill in the blank as opposed to a yes-or-no question?

MR. GARDNER: Object to the form of the question.

THE WITNESS: Again, it depends on the context of the question, it depends on the purpose of the survey: what exactly are you trying to understand. In complex surveys you might want to ask both open- and closed-ended questions, but it really does depend on what you want to know.

BY MR. GOLDSTEIN:

Q. From the surveys that you reviewed for purposes of testifying today, can you quantify for me what percentage of them were open-ended as opposed to closed-ended?

A. Are you asking me how many questions are asked in the surveys that I've reviewed that are the open-ended format as opposed to closed-ended format?

Q. Yes.

A. Very, very few open-ended format. I think in the 950 or so questions asked about smoking, I don't think there are more than 5 or 6 that are open-ended.

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The great bulk are closed-ended. Most survey people do not use with any frequency open-ended items.

Q. Do you believe that over time a particular word can change its meaning, for example, the word "harmful"?

A. I --

MR. GARDNER: Let me object to the form of the question.

Are you asking a specific question or a general question?

MR. GOLDSTEIN: I'll reask it. I'll make it specific.

Q. Is it your understanding that the word "harmful" as contained in a survey questionnaire in 1954 might have a different meaning than it does today?

A. Well, I guess the answer is I don't know. I can see it is possible that words can change meaning over time. I have not given enough thought to whether "harmful" means the same in 1954 and 2003 to have an opinion.

Q. Let me give you specifics: In the 1954 surveys it is my understanding that a quarter or a third of those responding identified sore throats and coughs as one of the health risks. Is that accurate from your understanding?

MR. GARDNER: I object to the form of the

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question.
THE WITNESS: I don't recall the exact number. Let's just agree that a substantial number did give that response.
BY MR. GOLDSTEIN:
Q. Okay. And was a similar question asked that you're aware of more contemporaneously to today?
A. The same "harmful" -- what-does-"harmful"-mean questions were asked in 1999.
Q. So roughly the same questionnaire was asked or --
A. I think the same question was asked, the same two questions, that is, "Is or is not smoking harmful?" And among those that said it was harmful, there was a follow-up which said, "In what way do you think smoking is harmful?" the same way it was asked in '54.
Q. Who did those surveys?
A. Gallup.
Q. Do you know who paid for those?
A. I think Gallup paid for it themselves.
Q. You don't know or you think?
A. I don't know. Let's go back.
Q. Okay. Fine.
Do you know whether any of the material that you're relying on in providing your testimony today was

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ever paid for by the tobacco industry, including but not limited to Philip Morris?

A. I don't think any particular piece in here was paid for by a tobacco company. I have one item in here that comes from a survey that was commissioned by a tobacco-related organization or that trade group.

Q. Going back just to clarify, in the January 1954 survey, tell me if you agree with this statement: "36 percent mention medical risks that could be viewed as serious less. No more than half mention less serious risks such as coughing or vague, non-health-related effects."

MR. GARDNER: Object to the form of the question.

You can go ahead and answer if you understand it.

THE WITNESS: Without actually seeing the data, I think that sounds like what I recall, but I say that with the caveat of not looking at it.

BY MR. GOLDSTEIN:

Q. Do you have it in front of you?

A. I know it's in here, but I'm unable to -- these things got out of their chronological order.

Q. Can you just peruse it and see if maybe you can find it.

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MR. GARDNER: Can we go off the record.
(Discussion held off the record.)
BY MR. GOLDSTEIN:
Q. Could you explain for me how you factor in the present-mindedness factor when you are trying to discern the accuracy of reports for giving expert testimony as you are.
MR. GARDNER: I'm going to object to the form of the question.
Go ahead.
THE WITNESS: Well, I don't have any particular reason in the case of the 1954 survey to think there is a present-mindedness contamination with regard to the word "harm." I don't have any particular reason to think that "harm" means something different in 1954 than it meant in, say, 1999 when this question was asked again. I think if we compare the 1954 open-ended questions to the 1999 open-ended questions, they clearly reflect that the public knows more about the specific reasons that smoking is harmful in 1999 than in 1954, and when I look at that open-ended data, it makes perfect sense to me. We see more mentions of specific sorts of diseases that is caused by smoking in 1999, and I think that reflects simply that medical science knows more.

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So it really looks to me like there isn't a difference in the meaning of "harm" in 1954 and in 1959 [sic] there is just the fact that the medical scientific community knows more about the specifics that -- about the specific damage that smoking can do to one's health.

BY MR. GOLDSTEIN:

Q. Would you agree that it is important to recognize that historical accuracy, the people who made decisions in the historical past were operating with a different set of informational environments than we are today?

MR. GARDNER: Object to the form of the question.

Answer it if you can.

THE WITNESS: I think if one is to properly interpret public opinion data over time, place it in a context that it is a context and that's information that needs to be considered.

BY MR. GOLDSTEIN:

Q. It is true, is it not, that people in the historical past, say 1954, didn't always know the kinds of things we know now?

MR. GARDNER: Object to the form of the question.

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You can answer if you understand it.
BY MR. GOLDSTEIN:
Q. Go ahead.
A. I agree that knowledge in 1954 is not the same as knowledge in 2003.
Q. Similarly, they didn't have the information then in 1954 that we do today concerning the risks of smoking?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I think that in 1954 the public knew that smoking was harmful to health. I think they didn't necessarily know exactly what way it was harmful to health. They knew it was harmful to health much in the way somebody might know jumping off a five-story building is going to be bad for you, even though you may not know exactly what sort of damage that jump will ultimately result in.
So to be specific, I think that the public knew in 1954 that smoking was harmful to health. I think as time goes on, they become more and more aware of specifically what that harm is.
BY MR. GOLDSTEIN:
Q. To draw your analogy to that jump off a five-story building: Today you would equate one that

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decides to start smoking with the knowledge that's out there and warnings on the package today more to a leap off a five-story building than you would, say, in 1954; is that correct?

MR. GARDNER: Object to the form of the question.

THE WITNESS: No, I would not because I think the harm -- that smoking is harmful was very well understood. It's just that people didn't know if it was going to cause a heart attack, if it would cause emphysema, was it going to cause lung cancer. That information becomes more and more specific as medical science moves informed.

BY MR. GOLDSTEIN:

Q. Would you agree that the answer to Question 14B, the open-ended answer, suggests that cancer really didn't loom large in the public's consciousness about health risks associated with smoking in 1954?

A. No, I would --

MR. GARDNER: Hold on. Let me get my objection in.

Object to the form of the question. I believe it has generally been asked and answered.

But go ahead.

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THE WITNESS: No, I would not, and let me give you one reason for that: I can compare the 1954 open-endeds to the 1999 open-endeds, and despite the amazing progress that medical science has made in understanding the causes of lung cancer, even in 1999 considerably less than the majority even mention cancer of any sort when they are asked about the harms of cancer [sic] in 1999.

So my answer to your question is no, I would not interpret the responses to Question 14B as indicating the public was unaware and not did appreciate that smoking was harmful.

BY MR. GOLDSTEIN:

Q. Would you agree that the perceived risks of smoking in 1954 were much less serious than what we would expect from the public today?

MR. GARDNER: Object to the form of the question.

THE WITNESS: No. Again, I think that the public was very well informed of the harms of smoking but not as well informed as they are today about the specific harm that smoking can cause.

MR. GARDNER: Let me -- if you were about to ask a question, I apologize. I'm just trying to figure out where we're going, because if we are going a lot

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longer, then I need a break. If we're not, I'll sit here.

Should we take a break?

MR. GOLDSTEIN: Yeah.

(Recess taken.)

THE WITNESS: In good conscience, I found the document we were looking for. It may mean we're here for another hour, but I needed to tell you that.

BY MR. GOLDSTEIN:

Q. We'll go into that in a second.

You had mentioned a 1999 survey that you felt showed that there really hasn't been that much of a change, a shift public opinion about smoking being a cause of lung cancer; right?

MR. GARDNER: Object to the form of the question. I believe it misstates his testimony.

MR. GOLDSTEIN: Sorry. It's inadvertent.

THE WITNESS: I have referred to that 1999 survey -- I think the open-ended questions -- the responses to those open-ended, 14B-type questions are consistent with the change we see in the closed-ended questions.

BY MR. GOLDSTEIN:

Q. But that wasn't my question.

You referred to 1999, and you referred to the

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rate of respondents answering in the affirmative about the connection between lung cancer and smoking to be 10 percent in 1999. Did I understand you correctly?

A. That's correct.

Q. What report is that that you're referring to?

A. I can find this one.

Q. Okay.

(Discussion held off the record.)

MR. GOLDSTEIN: Mark as next in order, Exhibit No. 3.

(Whereupon, Exhibit No. 3 was marked for identification.)

BY MR. GOLDSTEIN:

Q. Exhibit 3 is a printout that you obtained from the Roper Center for Public Opinion Research Web site; correct?

A. That's correct.

Q. It's a reference to the 1999 Gallup poll we had been talking about before we took a break; correct?

A. That's correct.

Q. You had indicated -- and I'm not trying to misstate the testimony, but my recollection is that you testified that it was roughly the same -- or there was a 10 percent number that was given in 1999 for the percentage of those people that believed that smoking

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caused lung cancer; is that right?
MR. GARDNER: Let me object to the form of the question.
THE WITNESS: Yes. The document I'm looking at in front of me shows 10 percent mentioned that smoking causes lung cancer.
BY MR. GOLDSTEIN:
Q. What was the significance that you drew from 1999 as compared to 1954 in terms of the significance when you compare those two, the data from both those?
A. In 1954, 5 percent mentioned lung cancer. We move to 1999 in an era in which many people would say that there is now a consensus that smoking is a cause of lung cancer, but still in this open-ended item all we have are 10 percent that said smoking is a cause of lung cancer when asked, "What sort of harm do you have in mind when you say smoking is harmful?"
Q. Have you read this before, Exhibit 3 or the data that is on there?
A. Yes, I have.
Q. Is it true that you're discerning from Exhibit 3, in comparison to the 1954 study, that there is roughly the same degree of public awareness about the cause and effect of lung cancer then as there was 45 years later?

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MR. GARDNER: Object to the form of the question.

THE WITNESS: No, that is not my conclusion.

BY MR. GOLDSTEIN:

Q. Okay.

A. Clearly, just looking at the data, it was 5 percent in 1954; it's 10 percent in 1999, so that is a 5 percent increase. I'm saying it is very consistent with what we would expect. We know a whole lot more. Physicians and scientists know a whole lot more, and so does the public by virtue of that information spreading through the media about how smoking is linked to lung cancer.

But to put the 1954 figure of 5 percent in context, we need to look at the 1999 figure, which is 10 percent, and note that really what we're seeing here is an artifact of an open-ended question; that when people are given free rein to come up with any answer they want, they frequently are all over the map in terms of the answer that they give, and we see this in 1999 with only 10 percent saying that "when I think of harm and I think of the harm smoking caused," only 10 percent mention lung cancer.

Q. So when you answered before, I was impressed with what I thought was your surprise at the small

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number in 1999. Is that an accurate statement that the 10 percent number you thought should have been larger?

MR. GARDNER: I'm going to object to the form of the question.

THE WITNESS: I'm surprised only in the sense that some people have argued that by the early 1990s there was a consensus, virtually a universal understanding that smoking is a cause of lung cancer. Now to find in 1999 when you ask people who say smoking is harmful -- and it's about 95 percent in this particular survey -- only 10 percent said lung cancer. That strikes me as, well, this is not really complete information; we really need to look at this, bring in more information, bring in more questions, and try to understand what it is that we see here.

BY MR. GOLDSTEIN:

Q. Isn't it true when you look at the different subcategories, that some of them may be actually related. In other words, the 10 percent of lung cancer does not take into account that 24 percent also thought that it caused cancer; correct?

A. That is correct, but it is not proper to add them up. As you see here where it says just above the "Causes Cancer," it adds to more than 100 percent due to multiple responses. So it's possible the same person

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can be counted twice, the same person can be counted for saying "lung cancer," for saying "causes cancer," and for saying "harmful to well-being"; that is, there were a total of three answers that were recorded. So what you can say here at most is 24 percent mentioned cancer, total.

Q. Have you added up these numbers?

A. I haven't, but just in eyeballing, probably 130 percent.

Q. You don't have any way of knowing if, in fact, there were multiple answers to lung cancer in addition to some of the others, do you?

A. No. There is no way you can know that from this information.

Q. That is just speculation on your part; right?

A. It's speculation that -- I mean, the best you can infer from what we're looking at is a total of 24 percent have mentioned cancer. Now, more may have, but you can't conclude that from what we're looking at.

Q. And you also cannot conclude that, for example, picking one of them, that yellow teeth and fingers -- you see there's a category there that smoking causes yellow teeth and fingers? There's one response there.

A. How far down is it.

Q. It's about two thirds of the way down there?

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A. I see it, yes.
Q. Somebody may have checked that as well as a number of the other categories because they were not following the proper instruction?
A. No. That's -- they are following the proper instruction. They could list up to three separate answers. The Gallup Organization coded three answers in 1995. Somewhat mysteriously and a bit troubling, they only coded two in 1954, but they coded three in 1999 because the code book is in here somewhere, so I know they coded three. You could give three legitimate answers. You could say "causes lung cancer," "causes cancer" and "causes my fingers to be yellow," and they would all be recorded and would be reflected in this information that you and I are looking at.
Q. I'm troubled, though, if this is sort of deceiving because there is a lot of room for error, would you not agree, in interpreting this particular study based on what you just testified to?
MR. GARDNER: Let me object. Object to the form of the question.
Go ahead and answer if you understand.
THE WITNESS: Yeah, I agree. I agree in the sense that you really can't make these long, over-time comparisons of open-ended questions. George Gallup

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himself, one of the pieces that he always said. You can't make these long-term, over-time comparisons using open-ended questions, and I think it's very problematic to compare this particular set of open-ended responses in 1959 [sic] to the ones in 1954.

BY MR. GOLDSTEIN:

Q. All right. So this would be of very limited value to you as someone who was analyzing or comparing trends that were reflected between the 1954 surveys and this 1999 survey; correct?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I wouldn't agree with that. I think that this information helps put the 1954 data in context. In that sense it is very useful.

BY MR. GOLDSTEIN:

Q. When you say "in context," how do you mean that?

A. Well, if you were to look at the 1954 data and you say, "Well, people who say smoking is harmful, only 5 percent say it causes lung cancer. Ergo, my conclusion is, well, people don't understand smoking causes lung cancer." If you look, then, at the 1999 data in an era in which most people apparently understand that smoking is a cause of lung cancer, and

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you see it now is only 10 percent, that gives you a context to interpret the 1954 data where people are saying it's only 5 percent. And you certainly wouldn't want to jump to the conclusion that because only 5 percent mention smoking as a harm in 1954, that they really had no appreciation that one possible harm of smoking could be lung cancer.

Q. Well, you are excluding in your answer consideration of the following categories, are you not: When you mention 10 percent, you are discounting or not including the 24 percent for "causes cancer," the 9 percent "causes death/can kill you/shortens life," the 4 percent "it's a poison/irritant/carcinogen" and things of that nature? You're only looking at the one line there, "lung cancer"; correct?

A. Yes. I'm trying to put the 1954 lung cancer response into a context by looking at the 1999 lung cancer response.

Q. In '54 what was the response to specifically lung cancer?

A. 5 percent.

Q. Any other cancers?

A. We have, finally --

Q. By the way, the 5 percent is 5 percent based on the 70 percent; correct?

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A. Based on the 70 percent, that's correct.
Q. So in order to be accurate, you should repercentage it based on the total, should you not?
A. If you want to talk about the sample in its entirety as opposed to those who give the response that smoking is harmful, yes, that's correct.
Q. I mean, it's more accurate if you're talking about a sample of the population to repercentage it as a percentage of 100 than it is as a percentage of those that responded affirmatively to the 70 percent; is that not right?
MR. GARDNER: Object to the form of the question.
Go ahead.
THE WITNESS: I think if you want to talk about the entire sample, you ought to base it on everybody.
BY MR. GOLDSTEIN:
Q. Okay.
A. I think that's fair.
Q. So you're agreeing with my premise?
A. Right.
MR. GARDNER: Let me object to the form of the question.
THE WITNESS: Again, to be clear, I think that -- and again, I want to be clear, it depends upon

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the purpose at hand. So if you want to talk about the entire sample as being representative of a population, you ought to look at the entire sample. I would agree with that.

BY MR. GOLDSTEIN:

Q. Given the multiple numbers that they responded to and the fact that it adds up to more than 100 percent, it is difficult to quantify that accurately as a percentage of the whole in that, is it not?

A. Yes, it is difficult from this data we have -- let me backtrack that. We can definitely say that, in the case of the 1999 data, 24 percent mentioned cancer of some sort. That's -- we can conclude.

Q. But you can also not with certainty say that some of the those people that responded, 24 percent for cancer, may not have answered that because they answered 10 percent for lung cancer; correct?

A. It's possible, yes.

Q. In other words, some people, when they went on to the form, could have elected to address the cancer issue by answering affirmatively to the "causes cancer" question or supply that answer, some may have responded that it causes lung cancer, and still others may have responded otherwise, like, "It causes death" --

A. Yes.

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Q. -- and you have no way of knowing, you know, who responded to what or whether they were different people or the same; correct?
A. That is correct. You can't infer that from this chart I have in front of me.
Q. It is an interesting number in and of itself, the 10 percent, but would you agree that as a reliable tool in your business, it is not particularly helpful for the reasons that we've discussed before?
MR. GARDNER: Object to the form of the question. It's vague.
MR. SLADE: Also asked and answered.
MR. GARDNER: That, too.
THE WITNESS: I think it can be reliable, placed again in the proper context. You have to understand the nature of the question, the sort of responses we typically get from open-ended questions, and the sort of responses we typically get when people are allowed to give more than one answer. I would not say the data is of no value; in fact, I think it does indeed have some value, particularly for helping us understand the responses to the 1954 survey.
BY MR. GOLDSTEIN:
Q. Other than comparing that one answer to lung cancer, have you compared any of the other statistics on

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here with 1954?
A. The open-ended items are you referring to, sir?
Q. Yes.
A. No, I have not.
Q. All right.
A. Backtrack: I have compared one, and that is the one that says it affects bronchial tubes and lungs.
Q. What comparison do you have there?
A. In 1954, 33 percent said it affected bronchial tubes and lungs, and in 1999 it was 17 percent.
Q. That number taken by itself would tend to indicate that -- in and of itself would indicate a shift in the public view about the cause and effect of smoking over time in terms of the damage to lungs; right?
MR. GARDNER: Object to the form of the question.
THE WITNESS: That's one possible interpretation. Another interpretation is that because of the cultural taboo on cancer, people were using euphemisms, much like they used euphemisms to talk about AIDS in the early 1980s. They would call it pneumonia or something. So they would refer to cancer using a euphemisms like bad for the lungs, bad for the bronchial tubes.

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BY MR. GOLDSTEIN:
Q. Any others that you considered?
A. Those are the only ones that I've referred in there.
Q. How many people responded to the 1999 survey?
MR. GARDNER: Object as asked. Are you talking about the whole survey or just the question --
MR. GOLDSTEIN: The survey. What was the size of the --
MR. GARDNER: The sample?
MR. GOLDSTEIN: -- the sample.
THE WITNESS: I know approximately. Would you take that?
BY MR. GOLDSTEIN:
Q. Yes.
A. About 1,100.
Q. Do you have raw data as to the number of responses for each of the categories here?
Well, let me ask you: Does it exist?
A. Certainly it exists.
Q. I mean, is it in your possession?
A. The actual number of people that responded?
Q. Yes.
A. Yes.
Q. Each of the answers that appear here were

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written in by the respondents; correct?
A. The way it would work, this was a telephone survey, so they would give the answers -- I'm not sure how Gallup works. Sometimes the interviewer just sits and types them in at the council. Other times they will record on a hard drive, and after the interview is over, the interviewer will go back and listen to the answer, type it in, and then it will go away to protect the confidentiality of that person. They can't go to the next interview until that open-ended comment has been wiped out of memory.
Q. Are these responses that are recorded to your knowledge supposed to be verbatim responses from the subject?
A. I don't know.
Q. There could be some interpretation by the person that's tabulating -- what do you call that person? The pollster?
A. The coder.
It is a two-step process. Somebody actually writes down more or less verbatim, and somebody else codes. And again, one of the problem of these over-time comparisons and open-ended items is that the whole process over a 50-year period has probably changed. At the very least, the people who did the coding and the

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people who did the interviewing long since are going to their reward, at least those in 1954.

Q. We don't even know for certain whether these responses that are listed here were the product of raw data that was given to the coder or whether it also involved some interpretation by an intermediary; is that right?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I think I know. It's a two-stage process, like I said. The actual more or less verbatim responses will be done by the actual interviewer. That will then go to the coder, who will read through them, and they will see "yellow teeth," and "yellow teeth" will get a code of 15. They will also see in that question "bad influence on kids" and maybe even "lung cancer."

BY MR. GOLDSTEIN:

Q. Now, you don't know from firsthand knowledge; you are testifying based on what you understand the process to have been at Gallup based on your having read or heard things; right?

A. That's correct.

Q. You never personally were a coder for the Gallup Organization and worked on this survey; right?

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A. I have not.
Q. Have you heard others be critical of this 1999 Gallup poll?
MR. GARDNER: Object to the form of the question.
THE WITNESS: No, I can't recall any, to be honest.
BY MR. GOLDSTEIN:
Q. Other than 1999, were there any similar surveys that were done, whether open-ended or closed-ended, that you're aware of on the same subject as, "In what way do you think cigarette smoking is harmful?"
MR. GARDNER: Hold on a second. I blanked halfway through that question.
(Record read as follows:
"Question: Other than 1999, were there any similar surveys that were done, whether open-ended or closed-ended, that you're aware of on the same subject as, 'In what way do you think cigarette smoking is harmful?'")
THE WITNESS: No. I know definitely there were not.

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BY MR. GOLDSTEIN:
Q. Would you agree that the results obtained from the 1954 surveys were more objective and less likely for error than those reported in the September 1999 Gallup poll?
MR. GARDNER: Object to form.
Are we asking again just to compare these two questions we have been comparing for a while?
MR. GOLDSTEIN: No. The questionnaire.
MR. GARDNER: So the whole questionnaire.
MR. GOLDSTEIN: Yes.
THE WITNESS: I have no reason to believe that one is more or less accurate than the other.
BY MR. GOLDSTEIN:
Q. So is it a frequent experience of yours to see polls which have a greater-than-100-percent response rate?
MR. GARDNER: Object to the form of the question. Vague.
You can answer if you understand it.
THE WITNESS: Yes. It's very common in open-ended questions that have multiple responses because a single respondent gets counted more than once in the tabulation.

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BY MR. GOLDSTEIN:
Q. That makes it difficult, does it not, to then compare accurately if you cannot ascribe a particular response to a particular person?
MR. GARDNER: Object to the form of the question.
THE WITNESS: No, I don't think it makes it impossible to compare the two.
BY MR. GOLDSTEIN:
Q. Well, instead of 1,100 individual people, you theoretically could have 3,300 individual responses; right?
A. You could have 3,300 individual responses; that is certainly possible.
Q. How many responses do you know were recorded?
MR. GARDNER: Object to the form of the question.
You need to make sure which survey we're on.
MR. GOLDSTEIN: I'm sorry. 1999.
MR. GARDNER: Thank you.
THE WITNESS: I know that as many as three responses were recorded.
BY MR. GOLDSTEIN:
Q. I understand that.
A. Okay.

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Q. Times the number of people that comprised the survey; right?

MR. GARDNER: Object to the form of the question.

BY MR. GOLDSTEIN:

Q. I'm trying to understand --

A. I understand the question if you want me to answer it.

Q. Yes.

A. I don't know how many people gave possibly zero response, one, two or three. I do not know how many would fall into each of those categories.

Q. That would be important to know, would it not, if you were trying to make a comparison of changes in the population if you couldn't accurately track the number of people that had responded?

MR. GARDNER: Object to the form of the question.

THE WITNESS: You would need to make those calculations, I think, in order to make the comparison, but it doesn't in any way mitigate the comparison. I think the principal problem with the comparison here is that in 1999 they were recording three responses; in 1954 they were recording two responses, so it wouldn't be surprising if you had more people in saying

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"cancer" in 1999 simply because more comments are being coded.
BY MR. GOLDSTEIN:
Q. Well, the difficulty I have -- and maybe you can clarify this for me -- is that based on what I understand your interpretation to be of the 1954 polls, they are expressed as a percentage of the persons that were interviewed; right?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Okay. All the closed-ended items are expressed as a percentage of 1,500 people that were interviewed, closed-ended meaning, "Have you read or heard that smoking may be a cause of lung cancer?"
BY MR. GOLDSTEIN:
Q. Yes.
A. Okay.
Q. But in terms of drawing a comparison between closed-ended and open-ended questions, that becomes difficult, does it not, because instead of three responses from each of 1,100 people, you could have maybe 2,750 responses total, indicating many of those people didn't respond?
MR. GARDNER: Objection to the form of the question.

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THE WITNESS: It's difficult but not impossible; that is, it is difficult with the information we have in front of us. If we buy the original data from Gallup, we can do a more elaborate analysis, and some of the questions that concern you could be answered.

MR. GOLDSTEIN: By the way, prior to the lunch break we talked about whether or not it would be possible to characterize the 1996-through-1999 work as related in some way or not related to a litigated matter. Is that something --

MR. GARDNER: If you're asking me, I don't have an answer for you.

BY MR. GOLDSTEIN:

Q. Would your answer still be the same after lunch as it was before: that you cannot answer that question?

A. I cannot answer that question.

Q. Just so that I'm clear: You're objecting on the ground of your concern that it would invade or violate confidentiality by identifying the name of the attorney that was involved; right?

A. I don't have a perfect recollection of what my confidentiality agreement requires me to do. I do know I am legally bound, and I do not want to take a chance on stepping over a legal line.

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MR. GOLDSTEIN: Why don't we propose to leave a space in the transcript that the doctor can review his confidentiality agreement, because I'm quite certain that it would not relate to the name of lawyer that was involved, and if that's the case, he can do it; otherwise, what will happen is we will have to let the Court decide.

MR. GARDNER: There are a lot of ways we can do it. If you're -- and we can do this on the record or off the record; I don't really care. If you're asking us, meaning the people on this side of the table, to figure out whether the name of the attorney falls within the veil of this confidentiality agreement that we've been talking about, and if it doesn't, to provide it to you, there are lots of ways we can do that. I can send you a letter, I can pick up the phone, whatever you want to do. If that's what you want to do, I'm certainly willing to think about that request and get back to you.

MR. GOLDSTEIN: Okay. That's fine.

MR. GARDNER: Okay.

(Information requested: _____
_____
_____.)

BY MR. GOLDSTEIN:

Q. The awareness level in the 1954 reports was

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83 percent in January and rose to 90 percent in June; is that right?

A. That is correct.

Q. But at the same time there was no change in the percent who believed smoking caused cancer?

MR. GARDNER: Object to the form of the question.

THE WITNESS: That's correct.

BY MR. GOLDSTEIN:

Q. Do you attach any significance to that?

A. No, not really. I mean, the difference between the January poll and the June poll could be simply due to sampling error. Both these surveys have a 4 percent sampling error, so that would clearly encompass a seven-point change.

Q. What is your understanding as to why there was a change in the awareness in a five-month period?

MR. GARDNER: Object to the form of the question.

Go ahead and answer if you can.

THE WITNESS: I don't really have any specific, concrete information to explain that. An alternative explanation that is very plausible is sampling error. One survey could have been four points over, one four points under, and that would account for the 7 percent

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difference.
BY MR. GOLDSTEIN:
Q. In 1954 is it correct that less than half the public -- I'm sorry -- roughly one in three were certain that there was no connection to lung cancer?
MR. GARDNER: Object to the form of the question.
THE WITNESS: For the record, I'm looking at the June 1954 poll, and 29 percent answer no to the question, "Do you thing cigarette smoking is one of the causes of lung cancer or not?" So 29 percent is the correct answer.
BY MR. GOLDSTEIN:
Q. Was there one that was 31 percent, also? Is there a 31 percent number?
MR. GARDNER: Are you asking as to that question in that poll?
MR. GOLDSTEIN: Yeah.
MR. GARDNER: Okay.
BY MR. GOLDSTEIN:
Q. Include maybe January as well.
MR. GARDNER: Is January right there?
THE WITNESS: No.
Well, we'll have to do a major-league search to find that one. Let me say it strikes me as possible,

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but barring actually looking at the data, I can't confirm it.
BY MR. GOLDSTEIN:
Q. Define the terms "potential of nonresponse bias." What does that mean to you?
A. I'm sorry to say I haven't heard of it, and I do know this literature pretty well.
Q. What is your understanding of the absence of random sampling techniques that was employed in 1954?
First of all, let me lay a foundation: Is it your understanding that random sampling techniques were employed in both 1954 polls?
A. It is my understanding that random selection by household was used to select the sample in 1954, both January and June.
Q. Well, the survey was not administered to a random cross-section of teenagers; is that right?
MR. GARDNER: Object to the form of the question.
THE WITNESS: My understanding is that the survey was administered to a random sample of adults, meaning, I think, in this instance, those 21 years of age and older.
BY MR. GOLDSTEIN:
Q. Was there a survey that you relied upon that

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went to high school students in or about the early '60s?
A. I'm --
MR. GARDNER: Hold on. Let me object to the form of the question.
Are you asking about in this case?
MR. GOLDSTEIN: Yes.
MR. GARDNER: Okay.
THE WITNESS: In this case I do not, as we sit here today, plan to use any survey done on high school students done in the late 1950s.
BY MR. GOLDSTEIN:
Q. How about the '60s?
A. I do not plan, as we sit here, to use any surveys of high school students in the 1960s.
Q. I know we have touched on this, and I don't mean to be repetitive, but I would like to close off the subject: In terms of accuracy, do you believe that there is an advantage to questioning respondents on their beliefs as opposed to their awareness?
MR. GARDNER: I'm going to object to the form of the question.
THE WITNESS: I don't think there is an advantage or disadvantage. There are two separate concepts; both are useful, but there is no particular reason to think one is better than another. It depends

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upon the topic you want to investigate and the particular issue you want to resolve.
BY MR. GOLDSTEIN:
Q. Do you plan on testifying using the words "common knowledge"?
A. I anticipate I will use the words "common knowledge," but it, of course, will depend upon what the counsel for the defense ask me.
Q. Is it correct that those words may have different meanings to different people?
A. I don't know. There is no evidence to that effect of which I am aware.
Q. Just for the record, if you could explain how you define "common knowledge."
A. I take it directly from the dictionary. I have in my reliance file three everyday definitions of "common knowledge" as derived from the dictionary.
Q. Well, a large amount of --
A. I can give you one, I think, what I recall off the top of my head.
Q. Okay.
A. It is something known to most people. That's from the Random House, I believe.
Q. Now, acceptance is not a more accurate measure in terms of common knowledge, or do you still ascribe to

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the common knowledge --
MR. GARDNER: Well --
MR. GOLDSTEIN: Let me rephrase. I'm getting tired here.
MR. GARDNER: I understand.
BY MR. GOLDSTEIN:
Q. When offering your opinion as an expert as to the findings that you have come across in terms of the prevalence of knowledge in the public, would it not be fair to say that it is a better measure of -- a more precise way of determining the extent of somebody's knowledge to delve into their belief as opposed to just common knowledge, meaning something that somebody may have heard?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Again, I guess just to restate: I don't think you can say better/worse outside of the context of what is the purpose; that is, what question exactly are you trying to answer. Awareness is different than belief. My definition of "common knowledge" is taken directly from Random House, which is, something known to most people. That's the way I define "common knowledge" because that's the way the dictionary defined it.

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BY MR. GOLDSTEIN:
Q. Would you not agree that a valid definition of "common knowledge" is where you can hold reasonable people responsible for their own actions predicated on a degree of belief that a factor/principle is true?
MR. GARDNER: If you're finished, I'm going to object to the form of the question.
If you understand it, go ahead.
THE WITNESS: I do not agree.
BY MR. GOLDSTEIN:
Q. Why not?
A. Because when we're talking about common knowledge, we are talking about the sort of information that I think is the lowest common denominator. It is the sort of thing that one learns passively. You can't not know common knowledge. I think you can't not know that Los Angeles sits on a fault line and that someday there will be a major earthquake. Common knowledge is the sort of thing you learn by being in the social mainstream, by watching television, by going to movies, by talking to friends, maybe reading a book or a newspaper. It is the sort of thing you learn passively.
What you are describing in terms of belief requires some sort of proactive decision on the part of the person to really process information; to sit down

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and think things through. Now, it's not that I think that's unimportant; I just think that's not common knowledge.

Q. Do you believe that prior to 1960 there was common knowledge that existed about the connection between smoking and lung cancer?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I believe in the 1950s that 90 percent of the public was aware of the conclusions of the scientific and medical communities that cigarette smoking may be a cause of lung cancer. That is at the level of awareness and at the level of common knowledge. At the belief level, of course, we've talked about that already, but this is my opinion when it comes to what is common knowledge.

BY MR. GOLDSTEIN:

Q. Well, isn't it true that -- and my question, by the way, was 1960. That's what I asked you.

A. Oh, I'm sorry.

Q. That's okay.

A. I misheard you.

Q. Would the same be true for 1960 in your opinion?

A. Yes.

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Q. Okay.
A. Since common knowledge existed in 1954, by definition it existed in 1960.
Q. Why is that?
A. Simply because we would not expect knowledge on this topic to be less in 1960 as opposed to 1954. Interest groups became more and more active in trying to inform the public about the health risks of smoking. It's very unlikely that levels of information would go backwards given the increased activity of interest groups giving away that information.
Q. Isn't it true, though, that prior to 1960 less than a majority of the public believed that there was a connection between smoking and lung cancer?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Depends how you define a majority, I guess. I mean -- and let me say what I mean here. There were some polls that showed 50 percent of the public believed that smoking was one cause of lung cancer that were done before 1960. So if 50 percent is a majority, then the answer to that would be not the case. If the answer is 51 percent, then I would agree with your statement.

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BY MR. GOLDSTEIN:
Q. Okay. But the issue of belief is not -- well, what were you referencing when you talked about 50 percent? What survey or what --
A. I -- my recollection is that there is a Gallup survey done in '57, '58, which shows exactly 50 percent believed that smoking is one cause of lung cancer.
MR. GARDNER: Let me just -- can we go off the record for just a second?
MR. GOLDSTEIN: Sure.
(Discussion held off the record.)
(Record read as follows:
"Question: What were you referencing when you talked about 50 percent?")
BY MR. GOLDSTEIN:
Q. So if half the populus did not believe something, you would not feel right expressing a view that there was, in fact, common knowledge of a particular fact; right?
MR. GARDNER: Object to the form of the question.
THE WITNESS: That's correct. Because I base common knowledge on the conventional dictionary definition which indicates awareness. It does not

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typically reference belief.
BY MR. GOLDSTEIN:
Q. I don't think I understood your answer.
MR. GARDNER: You guys talked past on another on that one.
THE WITNESS: Did I misunderstand the question or did he misunderstand the answer?
MR. GARDNER: Maybe a little of both.
BY MR. GOLDSTEIN:
Q. We discussed the 50 percent figure, and I think you said that if it was greater than 50 percent, meaning the percentage of the public that had a belief about something -- I'm sorry. Let me rephrase.
In the prior question we were talking about the 50 percent number, and you said that -- if I understood you correctly -- that if it was less than 50 percent of the populus that believed that there was a connection between smoking and lung cancer, that because of that large number of the populus not having that view, you would then not express the opinion that it was common knowledge?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I disagree with the statement.

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BY MR. GOLDSTEIN:
Q. What significance do you attach to something if less than 50 percent of the public adopt a belief about something, for example, the connection between lung cancer and smoking?
A. Oh, not very much really. If we're talking about is it 49 percent, is it 50 percent, is it 51 percent. The only difference is if you've got 51 percent, you can use the shorthand term "majority." But the fact that it might be 49 or it might be 51 I don't think is of much consequence.
Q. Is there a dividing line number at which you would then abandon the view that something was common knowledge? I mean, if a percentage of the populus did not believe that there was such a connection -- let me give you a example: If 5 percent of the populus believed that there was a connection between smoking and lung cancer, would that be something that would affect your testimony as to whether or not it would still be common knowledge?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I know it would not because I base my definition of common knowledge on awareness, not on belief.

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BY MR. GOLDSTEIN:
Q. Is that a matter of personal preference?
A. It's a matter of the way the dictionary defines the term.
Q. Would it not also be correct if another pollster or another expert witness didn't want to --
MR. GARDNER: Well.
BY MR. GOLDSTEIN:
Q. -- adhere to your same view?
MR. GARDNER: Sorry.
MR. GOLDSTEIN: I'm sorry.
MR. GARDNER: No. It was my fault.
MR. GOLDSTEIN: You were afraid I was going to say "huckster."
MR. GARDNER: Well, no. I apologize for --
MR. GOLDSTEIN: That's okay.
MR. GARDNER: Go on and ask the question.
BY MR. GOLDSTEIN:
Q. If another pollster or expert witness in the field interpreted it differently, you would still respect that person's opinion to differ with you, would you not?
MR. GARDNER: Object to the form of the question.
THE WITNESS: Well, I would not respect them if

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they wanted to redefine a word in a way that debases the English language, so that when the dictionary defines something in one way, the person decides, "Well, gee, I don't like the dictionary's definition. I'm going to call it something else," I would object to that.
BY MR. GOLDSTEIN:
Q. But again you're saying that common knowledge is the awareness of -- can you repeat your definition.
A. The one I'm taking from Random House is that -- and I think that it's close to the beginning if we can find it here. And it may be in everyone's interest to try to find -- I've got three definitions in there taken from conventional dictionaries, but the definition that one of them gives -- we've got one. This is from the Random House Dictionary -- see if you can see it there. It's off to the left. It is fuzzy because the print is so small.
(Discussion held off the record.)
THE WITNESS: This is from the Oxford English Dictionary dated 1993, and it says, "Common knowledge: Something known to most people; widespread, general, ordinary."
BY MR. GOLDSTEIN:
Q. Well, if less than half of the population maintained a belief in something, you would still say

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that is widespread?
MR. GARDNER: Object to the form of the question.
THE WITNESS: I would have to think about that because that is not in the context of the definition on "common knowledge." If less than half maintained a belief in something, it would depend on what the belief was about; that is, in some instances if half the people believe there are Martians in spaceships that are circling the planet, I would say that is a phenomenally high number, even if it was 49 percent. On the other hand, if only 49 percent believed that HIV was a cause of AIDS, you know, that's disastrously low. So it depends what the context is there.
BY MR. GOLDSTEIN:
Q. I take it that the science of polling is less precise than medicine?
MR. GARDNER: Object to the form of the question. I'm not sure it is within this man's expertise.
THE WITNESS: I think I'll -- I don't know enough about how scientific medicine is to give you an answer.
BY MR. GOLDSTEIN:
Q. Would you agree that scientific polling

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research is not necessarily precise; a lot of it depends upon the interpretation of the person who is reviewing it, in this case yourself?

MR. GARDNER: Object to the form of the question.

THE WITNESS: I don't think the word "precise" is a proper word to describe the limitations of polling. I think it's a matter of being aware of the impact of question wording, question order, departures from pure random samplings and making a professional judgment about its precision.

BY MR. GOLDSTEIN:

Q. In any of your research were you able to conclude that at any time prior to 1960 the general public was aware of the dangers of smoking such that it was likely to cause a fatal disease?

MR. GARDNER: Object to the form of the question.

MR. SLADE: Also asked and answered.

Go ahead.

THE WITNESS: Again, prior to the 1950s -- I'm sorry. Prior to the 1960s there is the question we have talked about at some length that 90 percent of the public was aware that smoking may be one of the causes of lung cancer. I would say yes, based on responses to

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that particular question.
BY MR. GOLDSTEIN:
Q. I want to make sure that we have covered the subjects upon which you are going to be offering testimony at trial. Can you just briefly peruse some of the other reports we have and tell me what about those reports you will be testifying about, if anything.
And we can go off the record while you do that.
(Discussion held off the record.)
BY MR. GOLDSTEIN:
Q. Go ahead.
A. First one of these is James Stimson, "Public Opinion in America."
MR. GARDNER: I'm sorry to interrupt: Do you want the highlights of what his opinions are going to be in this case, or do you want a summary of what these have to do with his opinions? I was afraid you were going to get the latter rather than the former.
THE WITNESS: You want the quick answer?
BY MR. GOLDSTEIN:
Q. I want the complete answer.
A. "Public Opinion in America" by James Stimson, the only thing that I take out of this is his definition of what is a trend, and a trend is a line that goes up like that and ultimately flattens out of its apex.

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MR. GARDNER: Let's go off the record because you guys are talking past one another.

(Discussion held off the record.)

BY MR. GOLDSTEIN:

Q. Could you state for me what opinions you intend on expressing at trial other than those you have already testified about?

MR. SLADE: Just asked and answered.

Go ahead.

BY MR. GOLDSTEIN:

Q. Go ahead.

A. I plan to testify that it was common knowledge that -- that the medical community had already concluded that smoking may be one cause of lung cancer.

I'm going to testify to a number of other awareness items that are contained in the 1964/1966 HEW US Public Health Service survey regarding the awareness the public had about the health hazards of smoking.

I'm going to testify about the level of belief that respondents had that smoking is one of the causes of lung cancer or that smoking is harmful to health or that smoking may shorten life.

I plan to testify on the harmfulness of smoking across a variety of indicators, not simply the indicator that "Is smoking harmful" or "Is it one of the causes of

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lung cancer?" or "Is it likely to shorten your life?" These are contained in the 1964/1966 HEW surveys.

I plan to testify that the tobacco companies have a very low favorability rating among the public; that among many, many questions that have been asked over a 30-year period, the tobacco companies fall at the dead bottom in terms of favorability of their evaluation by the public. And I plan to testify that because of this low favorability, the tobacco companies' claims that the link between smoking and lung cancer has not yet been conclusively demonstrated or more research is needed or any flat-out assertion that there isn't any link is simply not very credible based on a lot of social psychological literature that shows us the probability of acceptance of a message is related to the credibility of the source of that message.

That in essence is what I plan to testify to.

Q. Also, you are going to talk about trends I think I read in your expert designation.

A. Only in the sense that I will report and show trend data, the sort of stuff you're very familiar with, that is, the question that was first asked in 1954, "Is or is not smoking one cause of lung cancer?" then asked again 15 times. I'm not going to do anything fancy other than just showing that it goes up. I'm sure

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you're well aware of that.
Q. It is your belief and you're going to testify at trial that, as of 1954, the medical community had reached a consensus about smoking caused lung cancer; is that right?
MR. GARDNER: Object to the form of the question. I believe it's outside this expert's scope of expertise.
MR. SLADE: It also misstates his prior testimony.
Go ahead.
THE WITNESS: I don't have the expertise to come to that conclusion. I only have what I've read in some secondary sources that I've read to sort of prep myself in the case, but I couldn't offer an expert opinion on what the medical community had concluded in the '50s.
BY MR. GOLDSTEIN:
Q. Well, I wrote down as the first topic, "Medical community had concluded," and I wondered: Do you remember saying words to that effect? I may not have taken your entire answer down, but one of the first points that you mentioned in the testimony you just gave was, "Medical community had concluded."
MR. GARDNER: To the extent that was a

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question, I guess I object.
MR. GOLDSTEIN: No, it wasn't a question. I was trying to establish that we are on the same page.
MR. GARDNER: Okay.
BY MR. GOLDSTEIN:
Q. What did you mean by the "medical community had concluded"?
First of all, what was your opinion about the medical community's understanding of the connection between smoking and lung cancer, and at what point in time were you giving your answer?
MR. GARDNER: Object to the form of the question. Misstates his prior testimony. Outside the scope of his expertise.
Go ahead and answer if you can.
THE WITNESS: What I know about the medical community's conclusion comes from reading popular sources, you know, books like Up in Smoke and Tobacco Wars and Ashes to Ashes. What I know is that there were 14, I think, studies done between 1951 and 1954 in which the medical community stressed an association between smoking and lung cancer but rarely if ever used the word "caused."
BY MR. GOLDSTEIN:
Q. So to your satisfaction, it was a matter of

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common knowledge, based on the materials that you have reviewed in 1954, that there was that medical evidence of a connection in this country?

MR. GARDNER: I'm going to object to the form of the question. Misstates his testimony, and again, it's outside of his scope of expertise.

THE WITNESS: The inference I draw is solely within my area of expertise; that is, the inference I draw is based on the 1954 public opinion item, the one in January and the one in June saying whether -- where 90 percent of the public said they had read or heard recently that smoking may be one of the causes of lung cancer. I assume that -- let me back up here.

The fact that such a large percentage of the public said they had read or heard recently that smoking may be one cause of lung cancer must be due to the fact there is a lot of publicity out there about it, because it is so much higher than many of the other read or heard questions that were asked during the 1954 to 1969 time period.

BY MR. GOLDSTEIN:

Q. So if you were told that the tobacco industry in 1954 was actually suppressing known risks, that would be something that you did not discern from any of the research that you did in connection with your review of

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the polling data?
MR. GARDNER: Object to the form of the question. It's argumentative and outside the scope of his expertise.
MR. SLADE: Assumes facts not in evidence.
THE WITNESS: I have no direct knowledge of that. Of course, I've read in popular sources those allegations, but I have no way of knowing if they are true or not true.
BY MR. GOLDSTEIN:
Q. If you learned that there was a substantial amount of evidence for a reasonable person to conclude that there was a conscious, deliberate effort to suppress known health risks from the public perpetrated by the tobacco industry, would that change your opinion whether or not there was common knowledge among the public in 1954 that there were known health risks associated with smoking?
MR. GARDNER: Object to the form of the question. Same reasons I objected to the last question.
THE WITNESS: It is sort of complex, and I'm not sure I completely understood it. Let me take it in pieces.
I don't think there is any way I could ever, based on my expertise, come to some sort of conclusion

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that the tobacco companies did or did not know with finality that smoking was a cause of lung cancer. That may have been the case, but if the evidence were plopped in front of me, I don't have the expertise to evaluate whether it's true or not. So once I get to that point, I really can't answer the rest of the question because I just don't have the expertise to make a judgment about what the tobacco companies did and did not know.

BY MR. GOLDSTEIN:

Q. Let's talk about the HEW report of '64 to '66 briefly. You've alluded to it a few times, but can you tell me what you discerned from that report about which you are going to testify.

MR. GARDNER: Object to the form of the question. We'll let it go, but we can fix it.

THE WITNESS: There are a number of items in there about awareness. There are things that ask, "Have you heard" -- I have to rephrase here. "Which of the following, if any, institutions or sources -- again, I'm paraphrasing -- "have you heard that smoking is a cause of lung cancer?" 80 percent say they heard it from the American Cancer Society. Again, that's an indication of awareness. There are several similar items -- I won't go over them all -- but that's the general sort of nature of those particular items.

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There are also a number of belief items --
BY MR. GOLDSTEIN:
Q. Let me interrupt for just one second and go back before you get ahead of yourself.
A. Uh-huh.
Q. Were those polls that were expressed in that 1964/'66 report?
A. They were questions included in the 1964/'66 report. I got a printout of the data from Shook Hardy, who presumably got it from CDC.
Q. But the data consists of responses to survey questions?
A. Yes. And it might be helpful if I show it to you here.
This is what I'm talking about.
MR. GARDNER: You pulled that one right out. Nice work.
BY MR. GOLDSTEIN:
Q. You also listed in your previous answer you were going to testify about the level of belief and how that impacts your ultimate opinions in this case?
MR. GARDNER: Hold on a second.
Can you read it back to me, please.
(Record read as follows:
"Question: You also listed in

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your previous answer you were going to testify about the level of belief and how that impacts your ultimate opinions in this case?")

MR. GARDNER: Thanks.

THE WITNESS: I'm going to testify about beliefs, and the belief data that is available between 1954 and probably about 1969, I think, is when I ceased doing at least a whole lot of research on the belief question. The particular document that you have there has a lot of belief questions in it, and I'm going to review those, and a lot of them will demonstrate that a supermajority -- and by "supermajority," I mean around 66 percent or so believed that smoking was harmful, would kill you, would cause cancer. There are a variety of such belief items in that document that you have, and I presume you can go through and just read them.

BY MR. GOLDSTEIN:

Q. That's 1969; right?

A. '64.

Q. It also says spring of '66?

A. Yeah, there are two surveys actually. There's one done in '64, then it's largely duplicated again in '66. They just asked the same questions again, so there is almost nothing new in '66. I think it's the

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question about, "Have you seen the warning label on cigarette packs?" which almost everybody hadn't.

Q. Do you know when those warnings went out?

A. '66 I believe. I don't know the month.

Q. Do you know when the surgeon general's report came out?

A. '64.

MR. GARDNER: Object to the form of the question. There have been a whole lot of them.

MR. GOLDSTEIN: First came out.

MR. GARDNER: Okay.

THE WITNESS: January 1964.

BY MR. GOLDSTEIN:

Q. The word "belief," did we cover that already and your definition of "belief"?

A. Yes.

Q. Did you mean that to be interpreted as being one of the causes of lung cancer?

MR. GARDNER: Hold on. I'm sorry.

BY MR. GOLDSTEIN:

Q. When you answered "belief" -- I'll rephrase.

When you answered "belief," did you mean that to be in the context of to interpret that as one of the causes of lung cancer?

MR. GARDNER: I'm going to still have to object

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to the form of the question.
THE WITNESS: I'm not sure I --
MR. GOLDSTEIN: Let me try again.
MR. GARDNER: Please.
BY MR. GOLDSTEIN:
Q. Are you intending on testifying that when you used the word "belief," you intended to mean the belief that may be shared by the general public that smoking was one of the causes of lung cancer?
A. When I use the word "belief" in the context of questions that ask it, yes, I use "belief" meaning that some percentage of the public, as indicated in a survey, believe that smoking is one of the causes of lung cancer.
Q. Is belief a difficult thing to discern in your profession in the context of lung cancer?
A. I think the only way you really get at it is simply ask people belief questions. In the public opinion, belief questions are commonly asked. They're not as frequently asked as preference questions, but still it is common to ask belief questions. I think our feeling is that asking somebody if they do or not believe some particular phenomenon is sufficiently clear, that we get reliable answers, within the obvious caveat that if you change the wording of a question, you

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get somewhat different results.
Q. The next category was the harmfulness of indications. You mentioned that briefly if I wrote it correctly. I don't know if I did; that's why -- I believe you went into -- you listed a number of overall categories in a broadbrush type of way, and you were talking about some of the indications for harmfulness. Do you remember that testimony?
A. Yes.
Q. Could you elaborate briefly and tell me what your opinions are on that subject, other than what you've already testified.
A. I'm not sure I have any more opinions.
MR. SLADE: It's been asked and answered.
Go ahead.
MR. GARDNER: Is the question just is there anything else?
MR. GOLDSTEIN: Yes.
MR. GARDNER: Is there anything else?
THE WITNESS: I think I've said everything about harm that I'm going to say when I'm under my direct examination.
BY MR. GOLDSTEIN:
Q. How many times have you been deposed in a tobacco case other than this one and the one -- was it

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Rivera?
A. None.
Q. Have we covered all of your work in the tobacco industry except for the area that you are refusing to answer?
A. Yes.
MR. GOLDSTEIN: Just procedurally, I think what we should do, what I'd prefer to do -- and we can leave it up to Mr. Piuze -- but I think we want to certify the questions that he refused to answer. I think technically the reporter has to instruct him to answer.
Is that -- no?
Different reporter.
Are there any subjects that you are going to testify about that you haven't already discussed here today.
A. No.
MR. GOLDSTEIN: All right. With that, I think we can conclude the deposition, subject, of course, to our making a motion and proceeding further on matters if we can't work them out.
MR. GARDNER: Sure.
Let's go off for just one sec.
(Discussion held off the record.)
MR. GOLDSTEIN: We've had an off-the-record

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discussion, and I propose the following stipulation: that the court reporter shall be relieved of her duties under the Code; that the original shall be sent to counsel for the witness and that the witness shall review it and sign it under penalty of perjury; that Counsel shall attempt to return it within ten days of receipt, and if additional time is needed and if he is not required as a witness, then we will try to work out something, with the understanding that counsel has represented that he will try as quickly as possible to get back the transcript; that if for any reason he is called before the ten days or we have a problem, that we will be supplied with a copy of the changes and signed transcript within 48 hours' notice prior to him testifying; and that if the original is lost, misplaced or unsigned, that a copy may be used for any purpose as if signed.

So stipulated?

MR. GARDNER: So stipulated.

MR. SLADE: Sounds good.

MR. GOLDSTEIN: Great. Thank you very much.

(Deposition concluded at 4:40 P.M.)

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I, KENT L. TEDIN, hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 2003, at _____, California.

_____
KENT L. TEDIN

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I, AUDRA E. CRAMER, C.S.R. No. 9901, in and for the State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction, and the same is a true, correct and complete transcript of said proceedings;

I further certify that I am not interested in the event of the action.

Witness my hand this ____ day of _____, 2003.

_____
Certified Shorthand
Reporter for the
State of California

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